

No. 2441

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United States  
 Circuit Court of Appeals  
 For the Ninth Circuit.

Transcript of Record.

(IN TWO VOLUMES.)

TENABO MINING AND SMELTING COM-  
 PANY, a Corporation,

Appellant,

vs.

CHARLES D. BATES,

Appellee.

VOLUME II.

(Pages 273 to 520, Inclusive.)

Upon Appeal from the United States District Court  
 for the District of Nevada.

**Filed**

AUG 24 1914

**F. D. Monckton,**  
 Clerk.



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(Testimony of H. C. Edwards.)

Recross-examination.

I did not bring this foreclosure suit against the Reliance Company until after I returned from New York where I had met Mr. Locker and Mr. Tyree. They did not disclose the matter to me while I was there. I suggested it to them and I think that was the origin of it.

Tuesday, September 10, 1912, 10 A. M. [166]

**[Testimony of John Janney, for Defendant.]**

Mr. JOHN JANNEY, on behalf of defendant, testified as follows:

The defendant company has paid out no salaries to officers between the 30th day of June, 1910, and the 28th day of November, 1910. No disbursements were made by the company during the period from June 1st to June 30th, other than those recited in Exhibit 39.

The defendant corporation has held two stockholders' meetings since its organization. The instrument dated May 13, 1911, is the minutes of the meeting held on that date. Notices were sent to stockholders. A notice is attached. Complainant's attorney, Mr. J. D. Skeen, was there. Those present in addition to Mr. Skeen, were W. Mont Ferry, Benner X. Smith, E. O. Howard and John Tyree. These are the original minutes of the meeting. They were approved at a subsequent meeting.

The record of that meeting, as written there, is a record that is kept by the stenographer in our office, Miss Robertson. There was another stenographer for that meeting, a stenographer brought there by

(Testimony of John Janney.)

Mr. Skeen. Mr. Skeen's stenographer took the entire occurrences of the meeting and Miss Robertson got the substantial part of it rather than the entire occurrences. When those minutes were read, it was proposed to get a copy of Mr. Skeen's minutes to substitute for those minutes. Mr. Skeen's stenographer did not furnish us those minutes. Demand was frequently made upon him to do so, and he kept putting us off from week to week, and finally he said Mr. Skeen had asked him not to do it. So when we found we could not get Mr. Skeen's report, then those minutes there made the best minutes we could get, and inasmuch as they were approved, subject to the action of Mr. Skeen's stenographer to supplant them, then those are the best minutes we have, and it is an accurate account of what happened. That is a memorandum of the minutes in complete form, from which minutes we intended to be filed after Mr. Skeen finished his copy. They contain an accurate statement of what occurred at the meeting.

As secretary of the defendant corporation, I addressed a communication to Mr. J. D. Skeen, attorney for plaintiff in this case. I have a copy of it. It was with reference to this meeting. I addressed a letter to Mr. Skeen and sent him a copy of this meeting, and that letter is already in the [167] record. The letter handed me is a copy of the letter which I sent Mr. Skeen. This letter is a copy of a letter signed by Mr. P. B. Locker, which I sent to Mr. Skeen. There were two letters written to Mr. Skeen on this same subject. I sent Mr. Skeen a letter enclosing a copy of this letter for Mr. Locker. The let-

(Testimony of John Janney.)

ter to Mr. Skeen, dated April 28, 1911, signed P. B. Locker, has not been introduced yet. It is addressed "Tenabo Milling & Smelting Company" and signed by P. B. Locker. (Letter admitted in evidence and marked Defendant's Exhibit "O.")

The letter shown me, dated June 12, 1911, is a copy of a letter that I wrote to Mr. Skeen on that day. (Letter admitted in evidence and marked Exhibit "P.") I told Mr. Skeen that the contents of that letter would be considered at an adjourned meeting of the stockholders, and that I wished he would be present. Exhibit "Q" is a letter received from Mr. Locker and addressed to the Tenabo Milling & Smelting Company, under date of August 18, 1911. I received it as a letter to the company. (Letter marked Defendant's Exhibit "Q" and admitted in evidence.)

Mr. SHANK.—Objected to on the ground that it is incompetent, irrelevant and immaterial and not the best evidence, and is a self-serving declaration.

I am interested with Mr. Locker in other operations than those concerning the defendant company, and during the last two years have sent money and securities to Mr. Locker in France. I sent him in January of this year some securities worth about \$5,000.00. They were shares of stock in the French Mining corporation and sent at his request. I have also received moneys from Mr. Locker. There was \$900.00 sent for me to take up a draft against those securities. and there was \$1,000.00 sent me later on account of the same transaction, to purchase additional securities of the same kind. The money sent to him was

(Testimony of John Janney.)

to purchase additional securities for the same business.

I was not present at the board of directors' meeting when the first French contract was considered. I was not a director of the company at that time. There was a French contract proposed to the company, which was never adopted, before I became a director. The first contract that the company approved was approved with Mr. Locker while I was a director. I was present at the meeting but did not take any part in the voting. When we got down to Mr. Locker's contract, I then asked to be excused and withdrew from [168] the meeting and made a statement that I thought it would be embarrassing to the rest of the directors to consider the matter because of my being interested. I told them I was associated and interested with Mr. Locker in the contract. That is why I withdrew from the meeting.

We have a list of the company's present stockholders. The instrument shown me, dated June 28, 1911, is a list of stockholders, certified by the Windsor Trust Company. It contains the names of all the stockholders, but of course there are certain certificates of stock authorized by the company and not issued, and they are not in the list. They are in the minute book. This list contains all except three or four. A copy of this list is attached to the deposition of Mr. Ferry.

Defendant's Exhibit "R" is a copy of a commission contract to Mr. George Kroll. (Defendant's Exhibit "R" admitted.)

(Testimony of John Janney.)

Cross-examination.

I was present at the meeting when the French contract was made and stated to the board that I desired to be excused from participating in the business. I signed the minutes to that meeting. The minutes referred to where they passed the Locker contract bear date of March 5th, 1910. These minutes begin on page 30 and run to page 36. You will find in the minutes that all of the minutes that voted on the Locker contract I did not vote. On the last resolution, I find the minutes as follows: "Ayes, Messrs. Ferry, Howard, Smith. Mr. Janney excused." That was December 13th, 1910, and seems to be a modification of the Locker contract.

I cannot remember any reason why we held three meetings and drew three separate sets of minutes for the 5th of March. The meetings at which these various transactions involving the Locker contract and subsidiary contracts were entered into. At the two other meetings at which the subsidiary contracts were considered, I was present and the resolution and vote for the different contracts were carried unanimously, and I signed the minutes as secretary. I was willing to approve all of the contracts that made the contract in which I was interested effective.

I was willing to approve anything that would bring this company money in a legitimate way. I told Mr. Skeen that Mr. Locker had a contract for [169] 75,000 shares of stock as subscribed. I did not tell him that out of that 125,000 Mr. Locker would realize 75,000 and 50,000 would be the company's share. I

(Testimony of John Janney.)

did not tell him that Mr. Locker's share would be 75,000. I told him this company was about to be financed in France by a syndicate of underwriters; that these gentlemen had expended about \$30,000.00 in the expense incident to getting to the point that they had gotten, and that they had a contract with these underwriters which provided for their taking *firm* 75,000 shares of the stock and paying for that at the rate of \$1.40 per share. I do not remember attempting to show him how much the company would get out of this. I said the company would get \$.50 a share net. This conversation was between me and Mr. Skeen.

I did not write up these minutes and put them in the minute-book because Mr. Skeen promised that he would let me have those others. I waited on him week in and week out and the thing got stale and got stuck in a pigeon hole and I forgot it. I think it was two or three months we were trying to get it. The defendant corporation paid on March 28th, 1910, to Mr. Howard, \$50.00; to Mr. Ferry, \$50.00; to Mr. Pingree, \$50.00; to Mr. Smith, \$50.00; and to Mr. Janney, \$50.00. That is stated in line two of the disbursements of report to the Attorney General, of June 30, 1910. (Sheets of stockholders' meetings of May 13, 1911, marked Exhibit "S.")

Defendant rests.

The COURT.—I think, gentlemen, I will admit those letters addressed by Mr. Locker, and those letters identified by the witness Janney to have been written to Mr. Locker; but there was one letter ad-

(Testimony of John Janney.)

dressed by Mr. Pikard, the attorney, to the company, which I do not believe can be admitted; his signature is not identified, and while it is in testimony that he is the attorney, there is nothing to show that the letter came from him, except what purports to be his signature is attached to it. The letters which were addressed to Mr. Janney by Mr. Locker, I think, are nearly all of them headed "Tenabo Consolidated Mining Company," that seems to be the subject, and it is entitled as the subject, and inasmuch as he was the secretary of the company and Mr. Locker was acting for the company, either as agent or under this contract, in the sale of that stock, it seems to me those letters, if relevant, are admissible. If there is any question on about that, [170] I would like to hear from you.

Mr. EDWARDS.—No; so far as they are material to the issues in this case, we have no objection to them at all.

The COURT.—I have not looked over any of them to determine their materiality. Of course, if they are immaterial, I shall not consider them.

Testimony closed.

The following exhibits were duly offered in evidence and received:

**Complainant's Exhibit No. 1—Articles of Incorporation [of Tenabo Mining & Smelting Co.].**

Article 1. The name of this corporation is Tenabo Mining & Smelting Company.

Article 2. The location of the principal office of this corporation in the State of Nevada is at the First

National Bank, in the town of Elko, County of Elko, and State of Nevada.

Article 3. The objects and purposes proposed to be transacted, promoted and carried on by the corporation are to construct, purchase or otherwise acquire, maintain and operate tunnels, sluices, reservoirs and ditches for mining, irrigation and transportation purposes, also to purchase, lease or otherwise acquire lands, mills, mill sites, tunnel sites, buildings, machinery power-houses, pumping-plants, pumping machinery dump rights, ditch rights, water rights, flumes, pipes, pipe lines, private railways, private tramways private roads, easements, franchises and licenses; also to purchase, construct, lease or otherwise acquire, operate and maintain electric lighting and power plants, buildings, machinery, appliances and equipment appertaining thereto; to purchase, construct, lease or otherwise acquire, operate and maintain telegraph and telephone lines for the transmission of messages and sound by electricity; to furnish water, electricity, power, heat and light for mining, milling, agricultural, domestic and other purposes and uses; to sell and dispose of the same to other persons or corporations; to develop, sell, store, contract for and generally deal in and dispose of plants for the purpose of extracting values from ores; to purchase, treat, refine, extract, reduce, crush, smelt, concentrate and manipulate all kinds of ores minerals and metalliferous substances; to engage in smelting, reducing, refining, crushing, milling, treating and assaying minerals and ores of all kinds; to buy, sell and deal in machinery, blasting power, fuse,

caps, implements, candles and merchandise of all descriptions; to purchase, lease or otherwise acquire lands for the purposes of erecting thereon office buildings, plants, work-shops, dwelling-houses, warehouses, stores, hotels and other buildings in connection with the foregoing purposes; to prospect for, locate and acquire by discovery, lease, license, option, purchase, franchise, grant, gift or otherwise hold, possess, enjoy and develop, mine, work, operate and exploit mines, mineral lands and claims and to carry on such business in all of its branches.

Article 4. The amount of the authorized capital stock of the corporation shall be three million dollars divided into one million five hundred thousand shares of the par value of two dollars each. The amount of the capital stock with which it will commence business is five hundred shares; and the amount of the capital stock actually subscribed is one thousand dollars.

Article 5. The names of each of the original subscribers to the capital stock and the amount subscribed by each and their post office addresses are as follows, to wit:

Name.	Postoffice Address.	Shares.
H. P. Clark.	Salt Lake City, Utah.	100
Lester D. Freed.	Salt Lake City, Utah.	100
R. T. Badger.	Salt Lake City, Utah.	100
C. S. Varian.	Salt Lake City, Utah.	100
H. C. Edwards.	Salt Lake City, Utah.	100

Article 6. The period of the existence of this corporation is fifty years.

Article 7. The members of the governing board

of this corporation shall be styled Directors, and shall be five in number.

Article 8. The resident agent of this corporation who shall be in charge of said company in the State of Nevada shall be R. H. Mallett, a resident of Elko, in the county of Elko, State of Nevada, whose office is at the banking house of the First National Bank in the said city of Elko.

Article 9. The capital stock of this corporation after the amount of the subscribed price or par value has been paid in shall not be subject to [172] assessment to pay the debts of the corporation, and neither the stockholders nor their private property shall be liable for the payment of the debts and obligations of this corporation.

Article 10. The power to make and alter by-laws is hereby conferred upon and vested in the Board of Directors of this corporation.

**[Defendant's Exhibit "L"—Cablegram, Dated June 9, 1911, to Tenaboms.]**

Cablegram.

June 9, 1911.

To Tenaboms,

Paris.

Defer issuing prospectus until corrected. Will be compelled to refund, to buyers, if we do not notify them.

TENABOMS.

[Defendant's Exhibit "L"—Cablegram, Dated June 10, 1911, to Tenaboms.]

Cablegram.

June 10, 1911.

To Tenaboms,  
Paris.

Speedy action is absolutely necessary by stopping stock sales. Owing to false representations. In order to put a stop to sales orders must be telegraphed in plain language to banks. Telegraph what action has been taken concerning.

[Defendant's Exhibit "L"—Cablegram, Dated June 13, 1911, to Tenaboms.]

Cable.

Paris, June 13.

Tenaboms,  
Salt Lake City.

There is no need to be anxious. No stock sold through prospectus. Franco-Amer. Bank have not delivered single certificate of stock.

[Defendant's Exhibit "L"—Cablegram, Dated June 11, 1911, from Tenaboms to Frambank, Paris.]

Cable Message.

June 11, 1911.

Frambank, Paris.

We do not approve—prospectus—Chariere & Co. Should follow engineer's report. Must not dispose of the stock. Refuse to accept money.

TENABOMS.

[Defendant's Exhibit "L"—Letter, Dated June 17, 1911, Tenabo Mining & Smelting Co. to Franco-American Bank.]

June 17, 1911.

Franco-American Bank,  
22 Place Vendome,  
Paris, France.

Gentlemen: We have received a circular from Chaireire & Co., relative [173] the Tenabo Mining & Smelting Company. It misrepresents the facts and does not follow our engineer's reports. We do not wish to become a party, even directly, to a plan that is misleading to investors, and moreover we do not believe that the properties of this company require to be misrepresented. They possess substantial merit, which speaks for itself. The plain facts simply told are good enough. We therefore sent you the following cable on June 11th:

“We do not approve prospects Chaireire & Co. Should follow engineer's report. Must not dispose of stock. Refuse to accept money.”

If we can dispose of this stock under the contract entered into with Mr. Bernard Desouches and with the Underwriters, we stand willing to do so, but would prefer not to sell out securities at all than to dispose of them in an improper way. With assurance of high regard, we beg to remain,

Very truly yours,

TENABO MINING & SMELTING CO.

By \_\_\_\_\_, Secretary.

[Defendant's Exhibit "L"—Letter, Dated June 28, 1911, Tenabo Mining & Smelting Co. to Franco-American Banque.]

June 28, 1911.

Franco-American Banque,  
22 Place Vendome,  
Paris, France.

Gentleman: With further reference to our cable of June 11th, we beg to enclose herewith certified copy of resolution of the Board of Directors. Until further orders from us you will not deliver any certificates of stock or accept money, though we are anxious and willing to comply with our contract with Mr. Bernard Desouches as soon as it may be possible for us to do so.

Very truly yours,

TENABO MINING & SMELTING CO.

Enc. JJ/NBR.

\_\_\_\_\_, Secretary.

Certified Copy of Resolution of the Board of Directors of the Tenabo Mining & Smelting Company.

June 12, 1911.

Whereas, there has come to the notice of the Board of Directors of this company a prospectus mailed at Paris on May 27, 1911, and received at Salt Lake City on the afternoon of June 9, 1911, issued under the name of the Bank Chareire & Company of Paris, France, soliciting the purchase of the French Bearer Certificates of this Company, and

Whereas, said prospectus so issued contains statements, which are not founded upon fact, and mis-

representations as to the property of the company and the value of the same, and

Whereas, this company and its Board of Directors do not approve of said prospectus and the statements made therein, and disapprove of said representations and the use of said prospectus for the purpose of the sale of the said Bearer Certificates of this company, now therefore be it

Resolved, that the Board of Directors disapprove of the issuance of said prospectus and of the various false statements and misrepresentations contained [174] in the same, and that this Board should not allow any of its treasury stock or bearer certificates to be sold under such representations or any false representations, and that the action of the Secretary of the company in sending the following cablegrams be and is hereby approved:

June 9, 1911.

Tenaboms, Paris.

Defer issuing prospectus until corrected. Will be compelled to refund money to buyers if we do not notify them.

(Signed) TENABOMS.

June 10, 1911.

Tenaboms, Paris.

Speedy action is absolutely necessary by stopping stock sales owing to false representations. In order to put a stop to sales orders must be telegraphed in plain language to banks. Telegraph what action has been taken concerning.

June 11, 1911.

Frambank, Paris.

We do not approve prospectus Chaireire & Co. Should follow engineer's reports. Must not dispose of the stock. Refuse to accept money.

Paris, July 4th, 1911.

Tenabo Mining & Smelting Co.

105 Mercantile Block,

Salt Lake City, Utah.

Gentlemen:

We beg to acknowledge receipt of your letter of the 17th of June contents of which have had our best attention. We have been in communications with your representative, Mr. P. B. Locker, and, in accordance with your instructions, we will not dispose of any of your stock or accept any money there against until we hear further from you. In the meantime, we remain, Gentlemen,

Yours truly,

BANQUE FRANCO-AMERICAN.

(Signed) P. COLEM (?)

FRANDENIKARY (?)

P. PON SPECIALE.

[**Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated June 26, 1912.**]

(Loose Sheets) Minutes of Directors' Meeting.

The Directors of the Tenabo Mining & Smelting Co. met at their principal place of business in Salt Lake City, Utah, on June 26, 1912. All of the directors were present, except Director Janney, who is absent from the State. The following resolution

was proposed, seconded and duly adopted.

Resolved that the Treasurer be and he is hereby authorized to pay on account of Directors' fees, to the following directors, the sum of \$150.00:

To W. Mont. Ferry.

To E. O. Howard.

To John Pingree.

To John Janney.

There being no further business the meeting adjourned. The undersigned directors hereby approve of the foregoing minutes.

(Signed) W. MONT. FERRY,

E. O. HOWARD,

BENNER X. SMITH. [175]

November 21, 1911.

Resolved, that the President of this company be authorized and instructed to see that the assessment work for the current year is done and proper proofs of labor recorded.

Resolved, that the Treasurer be authorized to issue check in payment of same. Resolved, that the following bills be paid: John Tyree. Windsor Trust Company. Union Trust Company of New York. N. B. Robertson. Western Union Telegraph Company. Postal Telegraph Company. Century Printing Company.

(Signed) JOHN JANNEY, Sec.

Resolutions Board of Directors—Tenabo Mining & Smelting Company.

December 6, 1911.

Resolved, that after the receipt of satisfactory se-

curity by this company, the following cablegram be sent Franco-American Bank, France.

Deliver to the order of Locker two blocks each of ten thousand (10,000) shares against payment of Fr. 15,000, each block send remittance immediately to cover remit by mail to-us-here exchange on New York.

Resolved, that the Franco-American Bank be and the same is hereby authorized and instructed to deliver to the order of Payton B. Locker the bearer certificates of stock in this company now in the possession of the said Franco-American Bank upon the payment to said bank for the credit of this company of the sum of seventy (70) francs for each certificate of ten (10) shares, which is at the rate of Fr. 7 per share.

(Signed) JOHN JANNEY, Sec.

**[Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated April 20, 1912.]**

Minutes of Directors' Meeting.

The Board of Directors of the Tenabo Mining & Smelting Company, met at the office of Stephens, Smith & Porter in Salt Lake City, Utah, at Two o'clock P. M., on Saturday, the 20th day of April, 1912. Mr. Ferry acted as President of the meeting and Mr. Smith was elected acting Secretary of the meeting. There were present the following directors elected at the [176] annual meeting of the stockholders on the 11th day of March, 1912. W. Mont Ferry, E. O. Howard, John Pingree, Benner X. Smith.

John Janney being absent from the State. It was moved, seconded and adopted that the Board proceed to the election of officers. The following were nominated: W. Mont Ferry, President, John Pingree, Vice-president, E. O. Howard, Treasurer, and John Janney, Secretary.

There being no further nominations, a ballot was taken, which resulted in the election of said persons to said several offices. The following business was then transacted. Be it resolved, that the sum of \$800.00 is hereby appropriated and set aside for the purpose of paying the necessary expenses of cross-cutting and developing the ore body in the Gem Mine, which cross-cutting and developing, is hereby ordered to be done under the direction of Secretary, John Janney, to be paid upon satisfactory evidence of the performance of the work and vouchers therefor. Upon the resolution being put to a vote, it was unanimously adopted.

Director Smith stated that the mortgage now upon the property held by Edith Sherman could be extended for another year, upon the payment of \$250.00. He thereupon offered the following resolution: Be it resolved that there be paid upon the mortgage indebtedness held by Edith Sherman, the sum of \$250.00, upon condition that said mortgage be extended one year. Said resolution being put to a vote, was unanimously adopted. It was moved, seconded and unanimously adopted, Director Smith being excused from voting, that there be paid to Stephens, Smith & Porter, attorneys for the company, the sum of \$500.00 as a partial payment for

services rendered as attorneys. It was moved and seconded and unanimously adopted that H. C. Edwards, counsel for the company in the suit of equity now pending in Nevada, brought by one Bates against the company, be authorized to employ some competent counsel residing in Nevada to assist in the defense of said suit, at an expense to the company of not to exceed \$100.00, which it is understood will not be paid until after the rendition of said services and when the company is in funds.

It was moved and seconded and unanimously adopted that the treasurer be directed to pay A. H. Raleigh, the balance due him for the performance of the assessment work upon the property, to wit, \$171.40. [177]

There being no further business the meeting adjourned.

(Signed) BENNER X. SMITH,  
Acting Secretary.

We, the undersigned directors, agree to and approve the foregoing minutes.

(Signed) JOHN PINGREE.  
W. MONT FERRY.  
BENNER X. SMITH.  
E. O. HOWARD.

(The following constitute the record of the minutes of the Tenabo Mining & Smelting Co.)

[**Defendant's Exhibit "L"—Notice of First Meeting of Incorporators and Stockholders of Tenabo M. & S. Co.**]

Notice of the First Meeting of the Incorporators and Stockholders of the Tenabo Mining and Smelting Company, a Nevada Corporation.

Notice is hereby given, that the first meeting of the Tenabo Mining & Smelting Company will be held on the 6th day of January, A. D. 1909, at two P. M., of said day, at the office of C. S. Varian in suite 660-602 in the Utah Savings & Trust Building on Main Street in the City of Salt Lake, State of Utah, for the purpose following, that is to say:

1. To elect a Board of Directors for said corporation, consisting of five stockholders, and to provide for the tenure of office and compensation of said directors.
2. To provide for the compensation and the tenures of office of the officers corporation.
3. To designate and provide for a corporate seal.
4. To authorize and provide for the taking over from the Gem Consolidated Mining Company, a corporation, the Little Gem, Ollie, Winnemucca and Reno lode mining claims, and all other property and property interest of said Mining Company, situate in Bullion Mining District, Lander County, Nevada; and for the taking over from the Tenabo Consolidated Mines Company, a Nevada corporation, the Two Widows, Two Widows Extension, Copper Hill No. 1, Copper Hill No. 2, *Copper Hill No. 2*, Copper

Hill No. 3, and Copper Hill No. 4, lode mining claims; also, the controlling interest in the Nevada Phoenix Mining Company, a corporation, all situate in said mining district, county and State; all in consideration of the entire capital stock of the Tenabo Mining and Smelting Company.

5. To provide for issuance to the said Gem Consolidated Mining Company and to the said Tenabo Consolidated Mines Company of a portion of said stock and for the retention in the treasury of treasury stock.

6. To designate a transfer agent and registrar and in this behalf to [178] consider the advisability of appointing the Columbia Trust Company, and the Carnegie Trust Company, both of New York City, transfer agents and registrar respectively of the stock of the Tenabo Mining & Smelting Company.

7. To provide for and authorize the sale of treasury stock.

8. To adopt by-laws and transact all other business necessary and pertinent to the corporation affairs.

The subscribers hereto, being the incorporators and only stockholders of the corporation, do each waive further time or notice of said meeting.

Dated this 4th day of January, A. D. 1909.

(Signed) C. S. VARIAN.

R. T. BADGER,

H. P. CLARK.

H. C. EDWARDS.

[Defendant's Exhibit "L"—Minutes of Incorporators of Tenabo M. & S. Co., Dated January 6, 1909.]

Pages 2-3-4) MINUTES.

The incorporators of the Tenabo Mining and Smelting Company, incorporated under the laws of Nevada, pursuant to law and notice duly given, met on this the 6th day of January, A. D. 1909, at the office of C. S. Varian in suite 600-602, in Utah Savings & Trust Building on Main Street, in the city of Salt Lake, State of Utah: Present: H. P. Clark, R. T. Badger, C. S. Varian and H. C. Edwards. A telegram from incorporator Lester D. Freed, at Chicago, acknowledging service of notice and waiving time was read and filed. Whereupon, C. S. Varian was elected chairman and R. T. Badger was elected secretary of the meeting, and the following business was transacted. Mr. Edwards moved and Mr. Clark seconded the following resolution which was unanimously adopted:

Resolved, that the officers of this corporation, in addition to those provided for in the Articles of Incorporation, shall be a President, Vice-president and Secretary, who shall be stockholders and directors, and a Treasurer, and such other officers, attorneys and agents as the by-laws shall prescribe; the directors elected at this meeting shall respectively hold their offices for the period of two years from date hereof, and until their successors are elected and qualified, and the other officers, agents and attorneys shall hold their respective offices for terms as by the by-laws provided. The Directors shall receive as

compensation for their services each 2500 shares of the capital stock of the corporation, and shall be entitled to purchase—each 5000 shares of said stock at the price of 15¢ per [179] share at any time before the 25th day of November, 1909. The compensation, if any, of the secretary and other officers, attorneys or agents shall be fixed by the directors. Mr. Edwards moved, and Mr. Clark seconded, the following resolution, which was unanimously adopted: Resolved, that the corporate seal of this corporation be designated and provided for by the Board of Directors. Mr. Clark moved, and Mr. Edwards seconded, the following resolution, which was unanimously adopted: Resolved, that the Board of Directors do authorize and provide for the taking of a deed from the Board of Directors of the Gem Consolidated Mining Company of all the property belonging to said Company situate in Bullion Mining District, Lander County, Nevada, as described in and in accordance with the resolution by said Board of Directors of said Gem Consolidated Mining Company of the 25th day of November, A. D. 1908, and to issue to the said Gem Consolidated Mining Company and to deliver to its President and Secretary two certificates of the capital stock of this company, one for 400,000 shares and the other for 50,000 shares to be deposited in escrow with the Carnegie Trust Company of New York City to be held therein until the 25th day of November, 1909, as by said resolution on the 25th day of November, 1908, provided; and to authorize and provide for the taking of a deed from the Board of Directors of the Tenabo Consoli-

dated Mines Company of all of its property situate in Bullion Mining District, Lander County, Nevada, as authorized and provided by the resolution of the Board of Directors of said corporation on the 21st day of November, 1908; and to issue to said Tenabo Consolidated Mines Company and deliver to its President and Secretary two certificates of the capital stock of this company, one for 250,000 shares and the other for 50,000 shares to be deposited with the Carnegie Trust Company of New York City, and held in escrow by said Trust Company until the 25th day of November, 1909, in pursuance of and in accordance with the resolution of the said Tenabo Consolidated Mines Company as aforesaid.

Mr. Edwards moved and Mr. Clark seconded the following resolution, which was unanimously adopted: Resolved, that the Trustees of this company are authorized and directed to designate the Columbia Trust Company of New York City as the Transfer Agent of the stock of this corporation with necessary [180] powers to countersign the certificates of the original issue of stock and to designate the Carnegie Trust Company of New York City as Registrar of the stock of this corporation with authority to countersign the certificates of the original issue of said stock. Mr. Clark moved and Mr. Edwards seconded the following resolution, which was unanimously adopted: Resolved, that the Trustees are authorized to designate the treasury stock of this company and to authorize and provide for its sale.

Whereupon motion duly seconded and carried. A ballot was taken for the election of the trustees of

this corporation and upon count thereof it appeared that the following stockholders and incorporators were unanimously elected, to wit, H. P. Clark, R. T. Badger, H. C. Edwards, C. S. Varian, Lester D. Freed. There being no further business said meeting adjourned *sine die*.

We hereby certify that pursuant to notice a meeting of the incorporators of the Tenabo Mining & Smelting Company was held on the 6th day of January, A. D. 1909, at 2 o'clock P. M., of said day, at the office of C. S. Varian, in suits 600-602 Utah Savings & Trust Building, on Main Street, in the City of Salt Lake, State of Utah, and that the annexed notice with telegram from Lester D. Freed is the original notice of said meeting, and that the foregoing and annexed minutes thereof are the original minutes of the business transacted at said meeting.

(Signed) C. S. VARIAN, Chairman.

R. T. BADGER, Secretary.

[**Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated January 7, 1909.**]

(Pages 5-6-7-8-9) MINUTES.

At a meeting of the Board of Directors of the Tenabo Mining & Smelting Company pursuant to call, held at the office of C. S. Varian, suits 600-602 Utah Savings & Trust Building, on Main Street, in the City of Salt Lake, State of Utah, on the 7th day of January, A. D. 1909, at 4 o'clock P. M., on said day. The said Directors severally took and subscribed to the oath of office prescribed by the laws of the State of Nevada. Present Directors: H. P.

Clark, R. T. Badger, C. S. Varian, H. C. Edwards. Whereupon the Board organized by the election of the following officers, to wit: H. P. Clark, President; H. C. Edwards, Vice-president; R. T. Badger, Secretary and Treasurer, with a monthly salary of fifty dollars [181] per month for each of said officers. A telegram from Director Freed waiving time and notice of this meeting was read and filed. When the following proceedings were had the President in the Chair: Mr. Edwards presented a draft of by-laws for this corporation and moved their adoption, and Mr. Varian seconded motion. Whereupon the said by-laws were considered, approved and adopted by an unanimous vote. It is moved by Mr. Edwards, and seconded by Mr. Badger, that C. S. Varian be appointed attorney for the company at a salary of fifty (50) dollars, payable monthly, to be in full for all services in the matter of advice, but not to include retainers or services in any litigation in which the company may be involved, which motion was carried. Mr. Edwards offered the following resolution: Whereas this corporation can secure a deed from the Gem Consolidated Mining Company, a Delaware corporation, to the location titles of the Little Gem, Ollie, Winnemucca and Reno lode mining claims, situate in the Bullion Mining District, Lander County, Nevada, and Whereas this corporation can secure from the Tenabo Consolidated Mines Company, a Nevada corporation, to the location titles of the Two Widows, Two Widows Extension, Copper Hill No. 1, Copper Hill No. 2, Copper Hill No. 3, and Copper Hill No. 4, lode mining claims, and the

Nevada Phoenix lease, all situate in the Bullion Mining District, Lander County, Nevada.

Now, therefore, be it resolved, that this corporation accept a bargain and sale deed from the Gem Consolidated Mining Company, a Delaware corporation, and from the Tenabo Consolidated Mines Company, a Nevada corporation, to all of the above-described property in full payment for its entire capital stock, which said capital stock is hereby declared to be fully paid up, that is to say, that the conveyance of the title to said property to this corporation is accepted as payment in full at the par value for all of the stock of said corporation including the 750,000 shares of stock remaining in the treasury of this corporation.

Said resolution was seconded by Mr. Badger and being put to a vote was unanimously adopted. Mr. Edwards offered the following resolution: Whereas the Board of Directors of the Gem Consolidated Mining Company did on the 23rd day of November, 1908, authorize the execution of a deed of all of its property mentioned above situate in Bullion Mining District Lander County, [182] Nevada, to this corporation and agreed to accept 450,000 shares of the capital stock of this corporation to be set aside for distribution among its stockholders on the 25th day of November, 1909, and agreeing further that there should remain in the treasury of the Tenabo Mining & Smelting Company, 750,000 shares of its capital stock, and

Whereas the Tenabo Consolidated Mines Company, a Nevada corporation, at a meeting of its Board of

Directors, held November 21st, 1908, agreed and authorized the execution of a deed of all its property and property interests in the Bullion Mining District, Lander County, Nevada, including the location title of the Two Widows, Two Widows' Extension, Copper Hill No. 1, Copper Hill No. 2, Copper Hill No. 3, and Copper Hill No. 4, lode mining claims, and the property known as the Nevada Phoenix Lease, to this corporation and accept therefor 300,000 shares of the capital stock of this corporation to be set aside for distribution among its stockholders on the 25th day of November, 1909, expressly providing and agreeing that 750,000 shares of the capital stock of the Tenabo Mining & Smelting Company should remain in its treasury, and

Whereas, further, it was agreed, provided and authorized by the Board of Directors of the Gem Consolidated Mining Company at its meeting held on the 25th day of November, 1908, that the 450,000 shares of the capital stock of this corporation which is to be received by it should be deposited by its president and secretary with the Carnegie Trust Company of New York City, and held by said Trust Company, until the 25th day of November, 1909, before distribution of the same to its stockholders, and .

Whereas, the Tenabo Consolidated Mines Company at a meeting of its Board of Directors held on the 21st day of November, 1908, did provide and authorize that 300,000 shares of the capital stock of this corporation, which is to be received by it, should be deposited by its president and secretary with the Carnegie Trust Company and held by said Trust

Company until the 25th day of November, 1909, before distribution of the same to its stockholders. Now, therefore, be it resolved that the president and secretary of this corporation are hereby authorized, instructed and directed to issue to the Gem Consolidated Mining Company two certificates of stock, one for [183] 400,000 shares and the other for 50,000 and deliver the same to the President and Secretary of the Gem Consolidated Mining Company to be deposited by them with the Carnegie Trust Company of New York City, and held in escrow with said Trust Company until the 25th day of November, 1909, as provided, and agreed and be it further resolved that the president and secretary of this corporation are hereby authorized, instructed and directed to issue two certificates of stock, one for 250,000 shares and the other for 50,000 to the Tenabo Consolidated Mines Company and deliver the same to its president and secretary to be deposited by them with the Carnegie Trust Company of New York City, and held in escrow with said Trust Company until the 25th day of November, 1909, as provided and agreed, and

Be it further resolved that the secretary of this corporation is instructed to deliver said stock as soon as it can be issued and take proper receipts therefor. Said resolution was seconded by Mr. Varian and being put to a vote was unanimously adopted. Mr. Edwards offered the following resolution:

“Resolved that the Columbia Trust Company, of New York City, be and hereby is appointed Transfer Agent of the stock of this corporation, and be it fur-

ther resolved that the said Trust Company is hereby authorized to countersign, when signed by the president or vice-president and the secretary or assistant secretary of this company, an original issue of the capital stock to the number of 1,500,000 shares of the par value of \$2.00 each."

Be it further resolved, that the said Trust Company may apply to and act upon instructions of C. S. Varian, counsel for this corporation, in respect to any legal questions arising in connection with said agency, and be it further resolved, that the secretary be and is hereby instructed to file with the said Columbia Trust Company a certified copy of the foregoing resolution." Mr. Badger seconded the resolution, and upon being put to a vote was unanimously adopted. Mr. Edwards offered the following resolution: Resolved that the Carnegie Trust Company of New York be and is hereby appointed Registrar of the stock of this corporation, and resolved, further, that said Trust Company is authorized to countersign, when signed by the president or vice-president and secretary or assistant secretary of this company, an original issue of the capital stock to the number of 1,500,000 shares, of the par value of \$2.00 each, and [184]

Be it further resolved that the said Trust Company may apply to and act upon instructions of C. S. Varian, counsel for this corporation, in respect to any legal questions arising in connection with said agency, and

Be it further resolved that the secretary be and is hereby instructed to file with the said Carnegie Trust

Company a certified copy of the foregoing resolutions." Mr. Badger seconded the resolution, and upon being put to a vote, was unanimously adopted. Mr. Edwards offered the following resolution: Whereas, negotiations have been pending with brokers of New York City and Boston wherein it appears that a sale of 600,000 shares of the treasury stock of this corporation can be made, and whereas, it is the opinion of this Board of Directors that it is to the best interests of this corporation to grant an option for the sale of 600,000 shares of the treasury stock of this corporation to P. B. Locker of Salt Lake City, Utah, with full power to assign to others that he may desire;

Now, therefore, be it resolved, that this corporation do grant an option to the said P. B. Locker, or assigns, to purchase 600,000 shares of the treasury stock of this corporation, at the price of 15 cents per share for the first 400,000 shares and 20 cents per share for the remaining 200,000 shares, making a total of \$100,000, for 600,000 shares of the treasury stock, payable as follows: The sum of twenty thousand (\$20,000) dollars to be paid to this corporation on or before the tenth day of April, 1909, and the further sum of Five Thousand (\$5,000) Dollars on the first days of the months May and June of said year, and the sum of Ten Thousand (\$10,000) Dollars per month on the first days of July, August, and September, and Twenty Thousand (\$20,000) Dollars per month on the first days of October and November, 1909, making the full sum of One Hundred Thousand (\$100,000) Dollars.

Said contract to provide that time is the essence of the same, and in the event of said Locker, or his assigns, fail to make any of said payments, as therein provided, then said option will immediately cease and terminate, and the said Locker, or his assigns, to lose all rights to purchase said stock under the provisions of said option; *Provided*, however, that the said Locker nor his assigns, nor either of them shall incur any indebtedness or liability of any kind against this company or its property.

Provided, however, the Board may extend time of payments if it so desires, [185] and the president and secretary of this corporation are authorized and directed to execute immediately on behalf of this corporation such contract as will carry this resolution into full force and effect, said contract to provide that the said Locker, or his assigns, is to cause a market to be made upon the "Curb" of New York City and elsewhere, as may seem best, giving market quotations of the stock of this corporation, and the said contract to provide further that the stock books of this corporation shall be signed by the president and the secretary, and forwarded to the Carnegie Trust Company of New York City, with instructions to deliver treasury stock to the order of said Locker, or his assigns, in such amounts as may be called for, upon the payment to the said Carnegie Trust Company of the sum of 15 cents per share for the first 400,000 shares, and 20 cents per share for the last 200,000 shares of the 600,000 shares covered by this option, the same to be placed to the credit of this corporation for its use and benefit."

Said resolution was seconded by Mr. Badger and being put to a vote was unanimously adopted. Mr. Edwards informed the Board that Mr. C. C. Wylie has withdrawn any objection to the making of the contract provided for in the foregoing resolution. Mr. Varian offered the following resolution: Whereas, the Reliance Mining & Milling Company has offered to sell to this corporation four mining claims lying on Indian Creek in the Bullion Mining District, Lander County, Nevada, described as follows: Reliance No. 1; Reliance No. 2; Reliance No. 3; and Reliance No. 4.

Whereas, the said mining claims will be of value to this corporation by reason of the water flowing through the same and for a probable millsite: Therefore, be it resolved that this corporation do accept the deed and transfer to the said claims for the Reliance Mining & Milling Company and will pay the sum of Four Hundred Fifty (\$450.00) Dollars for the same. This amount to pay in full for the assessment work for the year 1908 and the survey of the same. Motion was seconded by Mr. Edwards and was unanimously adopted. Adjourned to meet at call of Chairman.

(Signed) R. T. BADGER,  
Secretary. [186]

**[Defendant's Exhibit "L"—Minutes of Meeting of  
Directors of Tenabo M. & S. Co., Dated March  
22, 1909.]**

(Pages 10-11) MINUTES.

At a meeting of the Board of Directors of the Tenabo Mining & Smelting Company, regularly

called pursuant to notice and held on the 22nd day of March, A. D. 1909, at the office of the company in the City of Salt Lake, Utah, there were present: H. P. Clark, President; R. T. Badger, Secretary; C. S. Varian and Lester D. Freed.

Whereupon, it appearing that the Columbia Trust Company of New York City, heretofore, on the 7th day of January, A. D. 1909, appointed as Transfer Agent of the stock of this corporation, is unable to act, and that the Carnegie Trust Company of New York City, heretofore, on said day, appointed Registrar of the stock of this corporation, is also unable to act; and the Tenabo Consolidated Mines Company a corporation, by its President, and the Gem Consolidated Mining Company, a corporation, by its President, having respectively requested this corporation to appoint the Windsor Trust Company of New York City as Transfer Agent, and the Union Trust Company of New York City, as Registrar, respectively, of the stock of this corporation; and it appearing to this Board that such appointments are proper and necessary to be made, the following resolution was unanimously adopted:

Resolved, that the appointment of the Columbia Trust Company of New York City, as Transfer Agent of the stock of this corporation, made on January 7th, A. D. 1909, is hereby revoked; and

Resolved, that the Windsor Trust Company of New York City, be and hereby is appointed Transfer Agent of the stock of this corporation, and

Resolved, that the said Trust Company is hereby authorized to countersign when signed by the Presi-

dent, or Vice-president, and the Secretary of this company an original issue of the capital stock of this corporation to the number of 1,500,000 shares of the par value of \$2.00 each, and

Resolved, that the secretary be and hereby is instructed to file with the said Windsor Trust Company a certified copy of the foregoing resolution, and

Resolved, that the appointment by this Board of the Carnegie Trust Company of New York City, made on January 7th, A. D. 1909, is hereby revoked, and the said Carnegie Trust Company is hereby authorized and requested to deliver to R. T. Badger, the secretary of this corporation, or upon his [187] order, the book of stock certificates and common seal belonging to this corporation, and

Resolved, that the Union Trust Company of New York City be and hereby is appointed Registrar of the stock of this corporation; and said Trust Company is hereby authorized to countersign, when signed by the President, or Vice-president, and the Secretary of this company, an original issue of the capital stock of this corporation to the number of 1,500,000 shares of the par value of \$2.00 each; and

Resolved, that the Secretary be and is hereby instructed to file with the said Union Trust Company a certified copy of the foregoing resolutions.

(Signed) R. T. BADGER, Secretary.

I hereby ratify the foregoing acts of the Board of Directors and adopt the same with same force as though I had been present at said meeting, and participated therein.

(Signed) H. C. EDWARDS.

[**Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated May 6, 1909.**]

(Page 12)

MINUTES.

Minutes of Directors' Meeting of Tenabo Mining & Smelting Company held pursuant to due notice, May 6th, 1909. Present: H. P. Clark, H. C. Edwards, C. S. Varian, R. T. Badger. The Board considered letter written by Mr. Hiram Tyree, requesting them to order the Windsor Trust Company to deliver the Gem Mining Company stock to the Astor Trust Company. After considerable discussion, it was decided that before doing so, this Board should have the unanimous consent of all parties interested in the original transaction.

The question of payment of \$200.00 to Mr. McCornick, and \$75.00 due Mr. Edwards by Hiram Tyree. It was unanimously decided that this company does not recognize any such claims, as all properties were supposed to come to the new corporation clear of debt. Regarding suit by Lloyd Seaman against the company, it was moved by Mr. Edwards that the general counsel of the company be authorized to incur any expense deemed necessary by him in protecting the company in suit of Lloyd Seaman vs. Gem Consolidated Mining Co., seconded by Mr. Varian, and carried. It was moved by Mr. Varian that the treasurer be authorized to pay 1908 taxes and costs on the Gem and Phoenix [188] Mining Claims, as indicated by letter from the Treasurer of Lander County, Nevada, same to be charged against

commissions to Locker. The following resolution was unanimously passed: Whereas, the original assignment of one-third interest of contract by Locker to Hiram Tyree, dated January 8th, 1908, has been presented to the Board, and a true copy thereof filed with the Secretary, the Secretary is hereby directed to notify Mr. Locker of the fact. There being no further business the meeting adjourned.

(Signed) R. T. BADGER,  
Secretary.

**[Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated August 5, 1909.]**

MINUTES.

Minutes of Meeting of Tenabo Mining & Smelting Co., held pursuant to due notice, August 5th, 1909. Present: H. C. Edwards, H. P. Clark, C. S. Varian and R. T. Badger. A letter from Mr. Hiram Tyree making demands as follows, was read to the Board:

1. "I want the Board to say that they will order the Windsor Trust Company to issue and deliver treasury stock up to the amount of 150,000 shares, upon the payment to the Windsor Trust Company of 15¢ per share.

2. "I want the Board to direct the Windsor Trust Company to deliver to the order of the Gem Consolidated Mining Company the fifty thousand share certificate, now in its possession.

3. "I want the Secretary of the Board to sign the blanks presented for a public statement in listing the stock." On motion of Mr. Varian, seconded by Mr. Badger, all said demands were denied, the vote

being as follows: Ay's—C. S. Varian, R. T. Badger and H. P. Clark. H. C. Edwards not voting.

On motion, the Secretary was authorized to wire P. B. Locker that the listing on the New York Curb was not authorized by the Board. On motion, the meeting adjourned.

(Signed) R. T. BADGER,  
Secretary.

[**Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated October 2, 1909.**]

MINUTES.

At a meeting of the Board of Directors of the Tenabo Mining & Smelting Co., at its office at rooms 600-602 in the Utah Savings & Trust Company's Building in the City of Salt Lake, on the 2nd day of October, 1909, held pursuant to call, there were present: H. P. Clark, President; R. T. Badger, Secretary; Lester D. Freed, H. C. Edwards and C. S. Varian, Directors. [189]

Upon motion of director Edwards, seconded by Director Freed, the following resolution was unanimously adopted: Whereas, an option contract for the sale of 600,000 shares of the treasury stock of this company by P. B. Locker, was made by and between this company and the said Locker, on the 14th day of Jan., 1909; and

Whereas, the said contract was not complied with, nor fulfilled by the said Locker, and was cancelled by resolution of this Board taking effect on the 15th day of July, A. D. 1909, and due notice thereof in writing given to said Locker and Hiram Tyree and J. W.

Janney, assignees of an interest in said contract; and Whereas, by resolution adopted by the Board on the 19th day of July, A. D. 1909, the said Locker and the said Janney were appointed the agents of this company with authority to sell for cash at not less than fifty cents per share, the remainder of the treasury stock of this company, yet unsold of the block of 600,000 shares, authorized to be sold by the aforesaid contract of January 14th, A. D. 1909, and Whereas, it was, by said last mentioned resolution, provided that the authority thereby conferred upon said Locker and said Janney should terminate and be considered revoked without further action of this Board, upon the expiration of sixty days, from the said 19th day of July, A. D. 1909; and Whereas, an indebtedness of approximately \$20,000.00 (including interest), charged against the "Gem," "Reno," "Ollie," and "Winnemucca" mining claims, the property of this company, by mortgage in favor of W. S. McCormick, is past due, and in suit for foreclosure, in the District Court for Lander County, State of Nevada; and Whereas, a suit is also pending in said court for the foreclosure of a miner's or laborer's lien filed against the said last-above named property to recover the sum of \$2,779.00 with \$500.00 attorney's fees, interest and costs; and Whereas, the annual work to be done upon the fourteen mining claims, the property of this company, has not been done for the current year, and must be done by and before the first day of January, A. D. 1910, and the sum of \$1,600.00 is required for the performance and superintendence of said work; and Whereas, this company has no

money for the satisfaction of the aforesaid claims and charges, or for such part thereof as may be found to be justly chargeable against the company's property, it is necessary that the company should have immediately the sum of \$25,000.00 for the purposes aforesaid and [190] its necessary expenses and charges; and Whereas, the company has no other means whereby to procure said or any sum of money other than by the sale of its treasury stock; Now, Therefore, be it resolved: That this company offers for sale and will sell, for the sum of \$25,000.00 in cash, so much of its treasury stock yet unsold as may be necessary to procure said sum at once, and hereby invites bids from responsible persons for the same; provided, nevertheless, that no stock shall be sold, issued or delivered until and unless the amount of money to be paid to this company for the entire number of shares hereby authorized to be sold, shall aggregate the full sum of \$25,000; the intention being to sell no more of the treasury stock, unless enough shares can be sold to net the company said sum.

And the secretary is directed to forward certified copies of this resolution to the Windsor Trust Company, P. B. Locker, J. W. Janney and Hiram Tyree. Approved.

(Signed) C. S. VARIAN.  
H. P. CLARK.  
LESTER D. FREED.  
H. C. EDWARDS.  
R. T. BADGER.

[Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated October 8, 1909.]

MINUTES.

Directors' Meeting of the Tenabo Mining & Smelting Company held pursuant to call, October 8th, 1909, at nine A. M., at the office of the company. Present: Directors Clerk, President; Badger, Secretary; Edwards and Varian, whereupon the following business was transacted. Upon motion of Mr. Varian, seconded by Mr. Edwards, the following resolution was unanimously adopted:

Resolved, that the secretary is hereby directed to forthwith file for record and have recorded in the office of the County Recorder of Lander County, Nevada, all the deeds of title to the several properties of this company. Whereupon it was moved by Mr. Badger and seconded by Mr. Edwards that the following resolution be adopted: Resolved that this company will receive and consider bids for the purchase of all or any of its treasury stock yet unsold, including stock offered for sale in accordance with the terms of the resolution of this Board adopted Saturday, October 2nd, 1909, which shall be submitted before November 25th, 1909. This limitation of time is made because of the contract and pool agreement made by and between this company and the Gem and Tenabo Mining Companies providing that no stock shall be released [191] and delivered to purchasers before said date, notice of which agreement and the terms thereof being duly given to and

accepted by the Windsor Trust Company of New York.

In place of stock sold receipts therefor by this company will be issued by the Trust Company. On motion, the meeting adjourned.

(Signed) R. T. BADGER,

Secretary.

**[Defendant's Exhibit "L"—Minutes of Meeting of  
Directors of Tenabo M. & S. Co., Dated October  
28, 1909.]**

MINUTES.

At a meeting of the Directors of the Tenabo Mining & Smelting Company, held pursuant to call at the office of the company in Salt Lake City, on the 28th day of October, A. D. 1909, at five o'clock P. M. of said day, there were present: Directors H. P. Clark, H. C. Edwards, Lester Freed and C. S. Varian, President Clark in the chair. The following business was transacted:

Upon motion of Director Edwards, seconded by Director Freed the following resolution was unanimously adopted: Resolved, that this company does hereby agree to sell to a purchaser, represented by the brokerage firm of McCornick Brothers of New York City, a block of one hundred and sixty-five thousand (165,000) shares of its treasury stock for the lump sum in cash of Twenty-five thousand (\$25,000) Dollars, upon the condition, nevertheless, that said number of shares of treasury stock is sold in its entirety for the said sum of twenty-five thousand (\$25,000) Dollars to be paid to the Windsor Trust Company for payment to this company at the

time of the delivery of said stock. The said Windsor Trust Company is hereby authorized and directed, upon payment to it of said sum of twenty-five thousand (\$25,000) dollars in one payment and at one time, to forthwith deliver to the said McCornick Brothers, or to their order, one hundred and sixty-five thousand (165,000) shares of the treasury stock of this company. And the secretary of this company is directed to forthwith make and forward certified copies of this resolution to the said Windsor Trust Company and the said McCornick Brothers of New York City.

I hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the Board of Directors of the Tenabo Mining & Smelting Company on the 28th day of October, A. D. 1909. [192]

Witness my hand and the corporate seal of said company this 29th day of October, A. D. 1909.

(Signed) R. T. BADGER,  
Secretary.

Approved by: Clark, Edwards, Freed, Varian.  
10/29/09.

**[Defendant's Exhibit "L"—Minutes of Meeting of  
Directors of Tenabo M. & S. Co., Dated November 18, 1909.]**

MINUTES.

The Board of Directors of the Tenabo Mining & Smelting Company met this 18th day of November, 1909, at the office of the company in Salt Lake City, pursuant to call. Present: H. P. Clark, President and Director; H. C. Edwards, Lester D. Freed and

C. S. Varian, Directors. Whereupon the following resolutions were unanimously adopted: Whereas it is unofficially reported to this Board that one hundred sixty-five thousand (165,000) shares of the treasury stock of this company has been sold for the sum of twenty-five thousand (\$25,000) dollars, and that said sum has been paid unto the Windsor Trust Company of New York for the use of this company, and Whereas, this company is indebted to the said Windsor Trust Company for certain charges and expenses; therefore be it Resolved, that the Windsor Trust Company of New York forthwith remit to this company the balance of said twenty-five thousand (\$25,000) dollars after paying to itself its own proper charges and expenses in the premises.

Whereas, the Gem Consolidated Mining Company is entitled to the present use of fifty thousand (50,000) shares of the capital stock of this company now deposited with the Windsor Trust Company of New York, therefore, be it Resolved, that the said Windsor Trust Company is hereby authorized and directed to deliver fifty thousand (50,000) shares of said stock unto the Board of Directors of the said Gem Consolidated Mining Company, or to its order, taking proper receipt and voucher therefor. Whereas, the Gem Consolidated Mining Company did by deed of bargain and sale, on or about the 14th day of January, 1909, in consideration of four hundred fifty thousand (450,000) shares of the capital stock of this company, convey unto this company the Little Gem, Ollie, Winnemucca, and Reno Mining Claims, situate in Bullion Mining District, Lander County, Nevada;

and Whereas, by the laws of *the Nevada* the words "Grant, bargain and sale," employed in said conveyance are express covenants that said mining claims were, at the time of the [193] execution and delivery of said deed, free from encumbrances done, made or suffered by the said Gem Consolidated Mining Company; and Whereas, at the time of the execution and delivery of the deed aforesaid, the said mining claims thereby conveyed were and still are encumbered by a miner's lien filed in October, 1908, by one Lloyd Seaman for two thousand seven hundred seventy-nine (\$2,779.00) dollars and costs, and suit is now pending to foreclose said lien and recover in addition five hundred (\$500.00) dollars as attorney's fees, besides costs, in the District Court of the Third Judicial District of Nevada, County of Lander; therefore, be it,

Resolved, that this company do withhold fifty thousand (50,000) shares of its capital stock heretofore deposited with the Windsor Trust Company of New York for the use and benefit of the Gem Consolidated Mining Company, being a part of the block of four hundred thousand (400,000) shares to be delivered to the Gem Consolidated Mining Company on November 25th, 1909, until the said suit and the lien aforesaid are fully satisfied, paid or discharged; and the said Windsor Trust Company is hereby charged to withhold from delivery fifty thousand (50,000) shares of the said stock until a further direction by this corporation; and be it Resolved, that the said Windsor Trust Company is hereby further authorized and directed to deliver to the President

and Secretary of the Gem Consolidated Mining Company, on November 25th, 1909, three hundred fifty thousand (350,000) shares of the capital stock of this company; and be it further Resolved, that the said Windsor Trust Company is hereby authorized and directed to deliver unto the President and Secretary of the Tenabo Consolidated Mines Company, on November 25th, 1909, three hundred thousand (300,000) shares of the capital stock of this company, heretofore deposited for the purpose, taking proper receipt and vouchers therefor. Resolved, that the secretary of this company do forthwith send to the Windsor Trust Company and to the President of the Gem Consolidated Mining Company and Tenabo Consolidated Mines Company, respectively, duly certified copies of the foregoing resolutions. Resolved, that the secretary or treasurer of this company upon receipt of any money from the Windsor Trust Company, do forthwith deposit the same in the Utah National Bank of this City, to be drawn out only upon checks signed by the President and [194] Secretary.

(Signed) R. T. BADGER,  
Secretary.

**[Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated December 7, 1909.]**

MINUTES.

The Board met pursuant to call at the company's office in Salt Lake on this the 7th day of December, 1909, at four o'clock P. M. Present; H. P. Clark, President, R. T. Badger, Secretary; H. C. Edwards

and C. S. Varian, Directors.

Mr. Janney presented a bill for expenses aggregating in the sum of \$2,082.75. Upon a consideration it was ordered that the charge of \$1,800.00 made for office rent and expenses of Locker & Jannay for the year ending December 31st, 1909, and the charge for a city directory of \$6.00 be denied as not proper charges against this company; and that the charges for stock certificates of \$105.00, and for corporate seal of \$2.50 be denied, the same having been heretofore paid by this company.

It was further ordered that the secretary be instructed to ascertain who paid or furnished the money for the payment of the fees for incorporation of this company, to wit: State fee, \$150.00, County Clerk's fee, \$6.00, in all \$156.00, and to pay said sum to the person entitled thereto. It was further ordered that the secretary ascertain whether the bills of Kelly & Company and the Grocer Printing Company for stock ledgers \$6.00, and letter heads and envelopes \$7.25 have been paid, and if so by whom, and that he pay the amounts as above to the proper person. It was further ordered that the President refer the charge made for labor and superintendence in the aggregate sum of \$219.00 for account of A. E. Raleigh, John Tyree, Ray Kaller and Forest Keller to Mr. Weston with instructions to investigate the same and report at once whether the work was in the nature of assessment work or if not, what it was for and the necessity therefor. A letter to the secretary of this company from Mr. Hiram Tyree under date of November 28th, 1908,

enclosing a "LISTING APPLICATION FOR THE BOSTON CRUB" with request for its verification and exception by the secretary in order that Mr. Tyree could list the stock of the company, as in said application stated, was presented and read to the Board. Whereupon the following resolution was unanimously adopted. Resolved, that it appearing that the title to some of the mining claims belonging to this company is encumbered and clouded by deeds [195] to one Gallagher, former secretary of the Gem Consolidated Mining Company, and further by a suit to foreclose the lien of one Lloyd Seaman now pending in the State Court of Nevada for Lander County; and Whereas, the Board of Directors does not deem it wise or justifiable to make any further disposition of the stock of this company until the titles to its property have been cleared in the premises, the request of Mr. Tyree is denied, and the secretary instructed to take no action in the matter. It was further ordered that the attorney for the company be directed to inform Mr. Tyree of the action of the Board. Whereupon the meeting adjourned subject to call.

(Signed)

R. T. BADGER,  
Secretary.

**[Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated December 29, 1909.]**

The Board of Directors met at the office of the company at Salt Lake City pursuant to call on this the 29th day of December, 1909. Present: H. P. Clark, President; R. T. Badger, Secretary and C. S. Varian,

Director. The attorney for the company reported that he had obtained from escrow in McConick's Bank the title deeds of this company. Upon motion, it was ordered that the secretary do send all of the title deeds and patent to the Recorder of Lander County, Nevada, for record, and that he also procure abstract of title to be written up to date. It appearing that it is desirable to list the stock of this company upon the Boston Curb—upon motion it was ordered that the secretary make and verify the necessary statement for that purpose in accordance with the statement approved by the Board at this meeting. Upon motion it was ordered that the salaries of the secretary and attorney be paid for the current month, and that the secretary do pay McCornick & Co., \$75.00 on account of attorney's lien on papers in escrow in favor of E. B. Critchlow. It appearing that the deed from the Tenabo Consolidated Mines Company to this company misdescribed the "Widow" claim as the "Two Widows" claim, the attorney of this company is directed to prepare a deed correcting same and procure execution thereof by the Tenabo Consolidated Mines Company. There being no further business the meeting adjourned.

(Signed)

R. T. BADGER,

Secretary.

**[Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated February 4, 1910.]**

Salt Lake City, February 4, 1910.

Minutes of Director's Meeting of Tenabo Mining and Smelting Company held this day pursuant to due

notice. Present: Messrs. Clark, Varian, Edwards [196] and Badger. Mr. Varian reported that suit of Lloyd Seaman vs. Gem Consolidated Mining Company in Nevada would be continued for the term as per letter from plaintiff's counsel. Mr. Varian also reported letter to him from C. E. Kelly, attorney for Gem Consolidated Mining Company, requesting certain information. Upon motion laid upon table Mr. Varian then offered the following resolution: Whereas, there has been issued and sold about 920,000 shares of the capital stock of this company and there remains but about 580,000 shares; and Whereas, the capital stock of this company is non-assessable and the remaining 520,000 shares of the capital is the only resource left to the company and its stockholders for the purpose of developing its property; and Whereas, the members of this Board have no funds or other resources of the company, as except above; Now, Therefore, be it resolved that in the judgment of this Board of Directors they are not justified in making any further contracts for the sale of any part of the stock aforesaid, or in selling the same in any sum under the par value thereof, except in such quantities as shall be imperatively necessary to provide funds for the protection of the property of the company. Meeting adjourned until February 5th, at 12:00 o'clock noon without taking action on above resolution.

(Signed)

R. T. BADGER,

Secretary.

**[Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated February 5, 1910.]**

Salt Lake City, February 5th, 1910.

Minutes of Directors' meeting of Tenabo Mining & Smelting Company held at 12:00 o'clock noon, pursuant to adjournment of meeting of February 4, 1910. Present: Messrs. Clark, Varian, Edwards, Freed and Badger. Moved by Mr. Freed, seconded by Mr. Edwards that Windsor Trust be instructed to forward 2,000 shares of stock in the name of W. S. McCornick. That same be tendered to Mr. McCornick and that check for \$1,000.00 signed by Mr. McCornick, now held by Mr. Badger, be handed to President Clark and by him presented for payment. Carried. Mr. Locker presented a contract for purchase of treasury stock. Mr. Varian moved to reject the same, seconded by Mr. Badger. As a substitute, Mr. Edwards moved to lay Locker contract on the table. Seconded by Mr. Freed. Substitute motion carried by following vote. Yeas: Freed, Edwards, Clark. Nays: Varian and Badger. Resolution of Mr. Varian set forth in minutes of February 4th, on being put to motion was unanimously [197] adopted. Moved by Mr. Edwards that it be unanimous sense of this meeting that no other business shall be transacted by this Board other than such as may be deemed necessary to preserve the property and property interests of this company and such formal action on other matters as may be deemed

proper by the Board to protect the interest of this corporation. Seconded by Varian and carried unanimously. Moved by Mr. Edwards: *That is* the desire of each and every member of this Board to be relieved as Directors and Officers of this company, and that the Windsor Trust be requested to furnish to the Board a list of stockholders of the company, and that secretary be directed to make such request of Trust Company over seal of company. Seconded by Mr. Freed, carried unanimously. On motion, meeting adjourned until 5:00 o'clock P. M.

(Signed)

R. T. BADGER,  
Secretary.

**[Defendant's Exhibit "L"—Minutes of Meeting of  
Directors of Tenabo M. & S. Co., Dated February 5, 1910.]**

Salt Lake City, February 5, 1910.

Minutes of Directors' meeting of Tenabo Mining & Smelting Company held at 5:00 P. M. pursuant to adjournment of previous meeting. Present: Messrs. Clark, Varian, Edwards, Freed and Badger. Resignation of Director H. C. Edwards presented and on motion, accepted. Mr. John Janney was elected to fill vacancy. Resignation of Director C. S. Varian was presented, and on motion, accepted. Mr. Benner X. Smith was elected to fill vacancy. Resignation of Director H. P. Clark presented, and on motion, was accepted. Mr. E. C. Howard was elected to fill vacancy. Resignation of Director Lester D. Freed was presented, and on motion was accepted. Mr. W. Mont. Ferry was elected to fill

vacancy. Resignation of Director R. T. Badger was presented, and on motion, was accepted. Mr. John Pingree was elected to fill vacancy. There being no further business, meeting adjourned.

(Signed) R. T. BADGER,  
Secretary.

**[Defendant's Exhibit "L"—Minutes of Meeting of  
Directors of Tenabo M. & S. Co., Dated February  
5, 1910.]**

Salt Lake City, February 5, 1910.

Minutes of Directors' meeting of Tenabo Mining & Smelting Company held at 5:00 P. M. pursuant to adjournment of previous meeting: Present: Messrs. Clark, Varian, Edwards, Freed and Badger. Resignation of Director H. C. Edwards presented and on motion accepted. Mr. John Janney was elected to fill vacancy, and after exhibiting certificate No. 1033, showing him to be [198] the holder of 100 shares of stock, Mr. Janney took and subscribed to the oath of office prescribed by law. Resignation of Director C. S. Varian was presented, and on motion, was accepted. Mr. Benner X. Smith was elected to fill vacancy, and after exhibiting certificate No. 1029, showing him to be the holder of 100 shares of stock, Mr. Smith took and subscribed to the oath of office prescribed by law. Resignation of Director H. P. Clark was presented, and on motion, was accepted. Mr. E. O. Howard was elected to fill vacancy, and after exhibiting certificate No. 1030, showing him to be the holder of 100 shares of stock, Mr. Howard took and subscribed to the oath of office prescribed

by law. Resignation of Director Lester D. Freed was presented, and on motion was accepted. Mr. W. Mont Ferry was elected to fill vacancy and after exhibiting certificate No. 1031, showing him to be the holder of 100 shares of stock, Mr. Ferry took and subscribed to the oath of office prescribed by law. Resignation of Director R. T. Badger was presented, and on motion was accepted. Mr. John Pingree was elected to fill vacancy, and after exhibiting certificate No. 1032 showing him to be the holder of 100 shares of stock, Mr. Pingree took and subscribed to the oath of office prescribed by law. There being no further business, meeting adjourned.

(Signed) R. T. BADGER,  
Secretary.

**[Defendant's Exhibit "L"—Minutes of Meeting of  
Directors of Tenabo M. & S. Co., Dated March  
17, 1910.]**

Salt Lake City, Utah, March 17, 1910.

Minutes of a meeting of the Board of Directors of the Tenabo Mining & Smelting Company. Pursuant to waiver of notice the Board of Directors of the Tenabo Mining & Smelting Company met at its place of business in Salt Lake City, Utah, at 11:30 o'clock A. M., on March 17, 1910. There were present H. P. Clark, R. T. Badger, Lester D. Freed and John Janney, being all of the Directors of said company. The secretary presented the waiver of notice pursuant to which the meeting was held. It was ordered to be entered at length in the minutes and is as follows:

The undersigned, being all of the Directors of the Tenabo Mining & Smelting Company, hereby call a meeting of the Board to be held at the office of the company, Salt Lake City, Utah, on the 17th day of March, 1910, at 11:30 o'clock, for the transaction of such business as may come before said meeting, and we hereby waive all requirements as to notice of such meeting. H. P. Clark. R. T. Badger. Lester D. Freed. John Janney.

President Clark called the meeting to order. The Board then took up the [199] business of filling the vacancy caused by the resignation of Director C. S. Varian, which resignation was accepted at a former meeting of the Board. Director Badger nominated Benner X. Smith to fill said vacancy on the Board. The nomination was seconded by Director Freed. There being no further nominations a ballot was taken resulting in the election of Mr. Smith by unanimous vote. Mr. Smith, being the owner of at least 100 shares of the capital stock, as shown by the books of the company, was declared by the President elected to said office of Director. He then duly qualified by taking and subscribing to the oath of office and then took part in the further proceedings of the Board. Director Freed then presented his resignation, which, upon motion, was accepted by the unanimous vote of the Board. Director Smith nominated E. O. Howard to fill the vacancy on the Board caused by the resignation of Director Freed. The nomination was seconded by Director Badger and there being no further nomination, a ballot was taken resulting in the election

of Mr. Howard by unanimous vote. Mr. Howard, being the owner of at least 100 shares of the capital stock, as shown by the books of the company, was declared by the President elected to the office of Director. Mr. Howard then duly qualified by taking and subscribing to the oath of office and then took part in the further proceedings of the Board.

Whereupon Director Badger resigned his office, which resignation was accepted by the unanimous vote of the Board. Director Smith nominated W. Mont Ferry to fill the vacancy on the Board caused by the resignation of Director Badger. The nomination was seconded by Director Howard. There being no further nomination, a ballot was taken resulting in the election of Mr. Ferry by unanimous vote. Mr. Ferry being the owner of at least 100 shares of the capital stock, as shown by the books of the company, was declared by the President elected to the office of Director. He then duly qualified by taking and subscribing to the oath of office. Director Clark then tendered his resignation, which was accepted by a unanimous vote of the Board, Director Smith was made temporary chairman to succeed President Clark. Thereupon Director Howard nominated John Pingree to fill the vacancy caused by the resignation of Director Clark. The nomination was seconded by Director Smith. There being no further nominations, a ballot was taken resulting in the election of Mr. Pingree by unanimous vote. Mr. Pingree, being the owner [200] of at least 100 shares of the capital stock, as shown by the

books of the company, was declared by the chairman elected to said office of Director. He then duly qualified by taking and subscribing to the oath of office.

There being no further business the meeting adjourned until Friday, the 18th day of March, 1910, at 11 o'clock A. M., of said day.

(Signed) H. P. CLARK,

President.

R. T. BADGER,

Secretary.

BENNER X. SMITH,

Chairman.

**[Defendant's Exhibit "L"—Minutes of Meeting of  
Directors of Tenabo M. & S. Co., Dated March  
5, 1910.]**

Minutes of a Meeting of the Board of Directors of  
the Tenabo Mining & Smelting Company.

Salt Lake City, Utah, March 5, 1910.

Pursuant to waiver of notice, the Board of Directors of the Tenabo Mining & Smelting Company elected on the 5th day of February, 1910, assembled and held its first meeting at the principal place of business of said company, room No. 601, Judge Building, Salt Lake City, Utah, at 4 o'clock P. M., on the 5th day of March, 1910. Mr. W. Mont Ferry was elected to temporarily preside and Mr. John Janney was appointed as temporary secretary of the meeting. Messrs. W. Mont Ferry, John Pingree, E. O. Howard, John Janney and Benner X. Smith, being all of said directors, were present.

The secretary presented the waiver of notice pursuant to which the meeting was held. It was ordered to be entered at length in the minutes, and is as follows:

The undersigned, being all of the directors of the Tenabo Mining & Smelting Company, do hereby call the first meeting of the Board of Directors to be held at room 601, Judge Building, Salt Lake City, Utah, on the 5th day of March, 1910, at four o'clock P. M., for the organization of the Board, the election of officers and the transaction of all such business as may be incident thereto, and such other business which may come before said meeting, and we hereby waive all requirements as to notice of such meeting.

(Signed) BENNER X. SMITH.

W. MONT FERRY.

E. O. HOWARD.

JOHN JANNEY.

JOHN PINGREE.

All of said directors being qualified stockholders and having filed their oaths of office as required by law, the election of officers for the company for the next ensuing year, and until their successors are elected and qualified, was then proceeded with and resulted as follows: For President, W. Mont. Ferry, who received five votes. For Vice-president, John Pingree, who received five votes. For Treasurer and Assistant Secretary, E. O. Howard, who received five votes. For Secretary, John Janney, who received five votes. And each and all were declared elected officers as voted for. The [201] permanent officers, so elected, assuming the duties of office

to which they were thus elected, proceeded with the business of the meeting. The following resolution was offered by Mr. Smith and upon being duly seconded was unanimously adopted:

Resolved, that the secretary be instructed to certify the foregoing minutes to the Windsor Trust Company, together with the signatures of the President, Secretary and Treasurer, and that H. P. Clark, former President of this company, be requested to witness said signatures.

Signature of President,  
(Signed) W. MONT. FERRY.

Signature of Secretary,  
JOHN JANNEY.

Signature of Treasurer,  
E. O. HOWARD.

Witness:

(Signed) H. P. CLARK.

H. P. CLARK.

H. P. CLARK.

The following resolutions were then duly proposed, seconded and unanimously adopted. Resolved, that the secretary demand of the former officers of this company all of the books, papers, records, files and other property of the company in their possession. Resolved, that the action of Director Howard in heretofore employing J. W. Edmunds, an Auditor, and causing the books of the company to be audited under his direction, is hereby ratified and approved, and the bill of \$25.00 presented for the same is hereby ordered paid. Resolved that Director Smith be authorized and directed to examine

the records of this Company and the abstracts of title to its properties for the purpose of determining the condition thereof. Resolved, that the claim of A. E. Raleigh for assessment work upon the claims of the company amounting to \$400.00 be allowed, approved and ordered paid. Resolved, that bill to the Utah Lithographing Company for lithographing stock certificates amounting to \$110.00 be authorized to be paid, also bill to Kelly & Company for two stock ledgers, \$6.00, and bill to the Breeden Office Supply Company for one minute-book, \$3.50, and bills for telegrams, express charges and assaying, which latter bills amount to about \$15.00, and be it further Resolved that the Windsor Trust Company be instructed to issue to W. S. McCornick a certificate for 2,000 shares of stock in this company and forward same to E. O. Howard, Cashier of Walker Brothers' Bank, Salt Lake City, Treasurer of this company, and the secretary is directed to certify this resolution to the said Trust Company. Director John Janney proposed the following amendments to the by-laws: (12) The secretary shall have authority to certify the copies of by-laws, copies of resolutions of the Board [202] of Directors and copies of other papers and official documents constituting a part of the records of the company. (13) Unless otherwise provided by resolution authorizing same, all contracts, powers of attorneys, deeds, agreements, applications, instruments in writing and all legal documents made and entered into by this company shall be executed by the President and Secretary, who are authorized to affix the corporate seal of

this company thereto. In the absence of the President, the Vice-president may execute said instrument in his stead, and in the absence of the Secretary, the Treasurer may execute such instruments as acting secretary. (14) Three members of the Board of Directors shall constitute a quorum of the Board of Directors for the transaction of business. (15) In the absence of the President, the Vice-president may in all respects perform and carry out the authority of the President, and in the absence of the Secretary, the Treasurer or Assistant Secretary shall act as secretary.

Director Janney moved the adoption of said amendments to the by-laws, which motion was seconded by Director Smith, and upon being put to a vote, said amendments to the by-laws were unanimously adopted. Resolved, that the Directors of this company be allowed as compensation the sum of fifty dollars per month each. Resolved, that Stephens, Smith & Porter, attorneys, be employed as attorneys for the company. Whereupon the proposal of P. B. Locker to sell the treasury stock was taken up and considered. Thereupon Director Pingree offered the following resolution. Whereas, this corporation has no funds with which to carry on its development work, to erect the necessary mills and equipment with which to economically treat and handle its ores, and in general to carry on its business,

Whereas, Mr. Duncan McVichie in his report estimates that a development fund of twenty or twenty-five thousand dollars will block out 100,000 tons of ore in the Gem mine, one of the properties belonging

to this corporation, which ore is now estimated to have an average value of \$18.00 per ton.

Whereas, Mr. MacVichie estimates that \$25,000 will supply a 100-ton daily capacity mill and that \$30,000 will supply a matting plant; Whereas, it would appear that \$100,000 or thereabouts expended on the Gem mine would put that property on a dividend paying basis and that other money can be [203] spent to advantage in developing the other properties belonging to this company, which seem to possess greater prospective merits; Whereas, there is remaining in the treasury of this corporation 580,750 shares of stock, 169,250 having been sold at a price of 15 cents per share net to the company,

Whereas, P. B. Locker has negotiations under way with French bankers, appearing to promise a practical plan for the sale of the stock of this corporation, and Whereas, P. B. Locker has offered to undertake the securing of a contract to net the company fifty cents per share for four hundred and fifty thousand shares of stock, or two hundred and twenty-five thousand dollars, now therefore be it, Resolved that this company enter into and that the President and Secretary be and they are hereby authorized and instructed to execute a contract with the said P. B. Locker in terms and figures following, to wit:

#### AGREEMENT.

This agreement, made and executed this — day of March, 1910, by and between Tenabo Mining & Smelting Company, a Nevada corporation, hereinafter called the company, and P. B. Locker, of Salt Lake City, Utah, hereinafter called the Agent, Wit-

nesseth: Whereas, the company has four hundred fifty thousand shares of its capital stock remaining in its treasury with which to provide funds for the development and operation of its properties, and the erection of reduction plants, and Whereas, said P. B. Locker is desirous of undertaking the sale of said stock and represents and believes that he can sell a portion of this stock in France and elsewhere, provided the necessary authority be given him to negotiate and execute a contract on behalf of the company and to list the stock upon the French Banking Market, or other markets:

Now, Therefore, for and in consideration of the mutual obligations herein imposed and the sum of one dollar interchangeably paid, the said P. B. Locker agrees and undertakes to provide and furnish all of the fees and expenses for the listing of each one hundred fifty thousand shares of stock provided for in a Special Power of Attorney set forth in the minutes of the company, and all other expenses required by the law of France or elsewhere and all trustee's fees and expenses, and he further agrees at his own expense to go to Paris in the interests of this company and use diligent effort to negotiate said contract. [204]

In consideration thereof the company hereby appoints said P. B. Locker its agent and attorney in fact under a special power of attorney (hereinafter referred to), to dispose of four hundred fifty thousand shares of its capital stock now remaining in the treasury, and the company agrees to duly authorize said P. B. Locker by special power of attorney to

make and execute on behalf of the company a contract in terms and effect as set out in the said special power of attorney.

The company further agrees that should said P. B. Locker successfully negotiate said contract, it will pay to the said P. B. Locker for his services from the moneys realized from the sale of said stock, but not otherwise, all in excess of the sum of fifty cents per share, said compensation to said Locker being conditional not only upon the negotiation of said contract, but upon the receipt by the company of the purchase price of said stock. It is mutually agreed that the entire amount of money received from the sale of said stock shall be deposited to the credit of the company upon the delivery of certificates of stock.

It is expressly understood and agreed that the company shall in no way be liable for any fees or expenses for the listing of said stock, or Trustees' fees or expenses, or any other expenses whatsoever, and that each and every share of stock so sold shall net the company fifty cents per share.

From the first money received from the sale of stock, the company shall pay the said Locker the first fifteen thousand dollars advanced to pay taxes and dues for listing the stock on the French market and the three thousand dollars fees to the Trust Company. The company shall, however, be reimbursed said amounts from the moneys received from the sales in excess of said amounts before said Locker shall be entitled to any compensation, the intention being that each and every share of stock sold shall

net the company fifty cents per share. Should the sale of stock be not sufficient to net the company fifty cents per share, the said Locker agrees to reimburse the company in stock out of his personal stock in an amount equal to the amount taken from the treasury and for which the company has not received fifty cents per share. The time allowed said Locker for the carrying out of this contract shall be as follows: Sixty days within which to furnish satisfactory proof to the company that he has entered into [205] contractual relations with reliable persons whereby the sum of \$15,000 will be furnished to the agent as needed for listing. Then ninety days to effect his negotiations in Paris or elsewhere and procure the execution of a satisfactory contract as set out in said special power of attorney, provided that in computing these periods of time, the months of June, July and August shall be excepted because of the summer season. Nothing in this contract shall be construed to require the agent to sell any of the said stock in France, but, on the contrary, he may negotiate the sale of the said stock at any other place or places desired by him.

In Testimony Whereof, the company has caused this contract to be signed by its President and its Secretary and its corporate seal to be affixed hereto, and the party of the second part hereto subscribes his signature this — day of March, 1910.

TENABO MINING & SMELTING COMPANY.

\_\_\_\_\_, President.

\_\_\_\_\_, Secretary.

\_\_\_\_\_, Agent.

Director Smith seconded the resolution. The resolution was thereupon put to a vote and adopted, four voting in the affirmative, Director Janney not voting, being excused. The Board then adjourned to meet at 4:30 o'clock P. M. this day.

(Signed) JOHN JANNEY,  
Secretary.

[Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated March 5, 1910.]

#### MINUTES.

Minutes of Directors' meeting of March 5th, 1910, held at its principal place of business at Salt Lake City, Utah, at 4:30 o'clock P. M., pursuant to adjournment of the previous meeting, all of the members of the Board being present, to wit: W. Mont. Ferry, E. O. Howard, John Pingree, John Janney and Benner X. Smith, the meeting being called to order by President W. Mont. Ferry, who presided during the meeting, John Janney, the Secretary, acting as such, whereupon the following proceedings were had: Director Smith offered the following resolution: Whereas, P. B. Locker has been in negotiations with certain parties in Paris, France, looking to the sale of treasury stock in this corporation, and believes that the sale of treasury stock can be effected there through negotiations recently opened up by him,

Whereas, it appears advisable that this corporation by the sale of its treasury stock secure funds for the installation of needed equipment and reduction works and for the further development of its prop-

erty, as well as [206] for carrying on its business affairs in general, now therefore be it

Resolved, that the said P. B. Locker have conferred upon him authority to execute a contract as hereinafter set out and that the president and the secretary of this corporation be and they are hereby authorized and instructed for and on behalf of this company to execute and deliver to the said P. B. Locker a special power of attorney for the purpose of authorizing him to execute such a contract as follows, namely:

#### SPECIAL POWER OF ATTORNEY.

Know all men by these presents, that the Tenabo Mining & Smelting Company has made, constituted and appointed, and by these presents does make, constitute and appoint Payton B. Locker, its true and lawful attorney for this corporation, and in its name, place and stead, and for its use and benefit, to execute and deliver a contract in words and figures substantially as follows, to wit:

Between the undersigned, the "Tenabo Mining & Smelting Company," a corporation organized under the laws of the State of Nevada, United States of America, with a capital stock of three million dollars, the principal place of business of which is at Salt Lake City, in the State of Utah, United States of America, by Mr. Payton B. Locker, attorney in fact of said company, acting under the powers vested in him by a certain power of attorney authorized and executed in accordance with a resolution of the Board of Directors of said company, adopted at a special meeting held on the 5th day of March, 1910, herein-

after called the Vendor of the one part, and \_\_\_\_\_, hereinafter called the Bankers, of the other part. It has been arranged and agreed as follows: The Tenabo Mining & Smelting Company, being desirous of placing four hundred fifty thousand shares of its capital stock in Europe of the nominal value of two dollars and the Bankers, after having examined the papers of the said company and the reports of the engineers, agreed to lend their support and the following arrangements have been made between the parties.

Article I. The Vendor agrees to apply through the Bankers to the Minister of Finances and to the Administration for the Registration of Property and Stamps in Paris for the compound duty on the shares and to furnish all necessary documents required by the laws of the French Republic. [207]

It further agrees to supply all documents necessary for the publication prescribed by the laws in the official Journal of the French Republic.

It further agrees to abide by the formalities for obtaining the admission of the shares upon the French Banking market. The Bankers, on the other hand, bind themselves to give all their assistance in respect of these various formalities so that they may be accomplished in the shortest possible time.

Article II. The costs in respect of application for compound duty on the shares and for deposit in respect of annual taxes to the Administration of the Registration of Property and Stamp, as also the compound duty on *comptant* stamping, and further the cost of publication in the official journal for ob-

taining the free circulation of the said shares in France, together with the expenses attached to the quotation of the shares and cost of printing the same to Bearer, as also all cost of advertising in the daily press of Paris and the Provinces, or in other financial papers, and generally the cost of issuing, are altogether reckoned to amount to a minimum sum of \$45,000.00. This amount and any expenses exceeding that amount, the Vendor does not agree to supply or pay, and the Vendor is not, nor shall it be in any way liable therefor, but the same shall be subject to arrangement and agreement between the said Payton B. Locker personally and not as attorney in fact and the said Bankers.

Article III. The Vendor hereby gives to the Bankers an option for three months after all necessary documents have been handed over to authorize the placing of shares to place one hundred fifty thousand shares of its capital stock of the par value of two dollars each at a price of 6.25 francs per share. In consideration of said option said Bankers further agree and firmly bind themselves that they will within said three months purchase from said Vendor one half of the said one hundred fifty thousand shares, being seventy-five thousand shares, and pay Vendor for the same within said three months at the price of 6.25 francs per share. In the event of said Bankers having at the expiration of said three months placed and paid for the whole of said one hundred fifty thousand shares, the Vendor hereby gives to the Bankers a further option for six months after the expiration of said three months to [208]

place a further block of one hundred fifty thousand shares of said stock at the price of 6.25 francs per share. In consideration thereof, the said Bankers agree that should they exercise this second option, they will pay to the Vendor for all of said stock they may place the price of 6.25 francs per share, and they further agree and firmly bind themselves that *they should* exercise this second option, they will within six months purchase from said Vendor one-half of said one hundred fifty thousand shares, being seventy-five thousand shares of this second option, and pay Vendor for the same within said six months at the price of 6.25 francs per share. In the event of said Bankers having at the expiration of said six months placed and paid for the whole of said one hundred fifty thousand shares, the Vendor hereby gives to the Bankers a further option for three months, after the expiration of said six months to place a further block of one hundred fifty thousand shares of said stock at the price of 6.25 francs per share. In consideration thereof, the said Bankers agree that should they exercise this third option, they will pay to the Vendor for all of said stock that they may place the price of 6.25 francs per share, and they further agree and firmly bind themselves that should they exercise this third option, they will within three months purchase from said Vendor one-half of said one hundred fifty thousand shares, being seventy-five thousand shares of this third option, and pay the Vendor for the same within said three months at the price of 6.25 francs per share.

Article IV. The shares shall be delivered by a

Trustee and shall represent nominative certificates deposited by the company in the hands of the said Trustee. The shares so delivered shall be to Bearer under the seal of the company with coupons attached and conjointly signed by the duly authorized officers of the company and the Trustee; the said one hundred fifty thousand shares to be first delivered shall be in the following denominations:

20,000 certificates to Bearer of five shares each.

5,000 certificates to Bearer of ten shares each.

And this shall also apply to further blocks of shares so far as same has not been altered, if required by mutual consent of the parties. A specimen of the shares shall be supplied by the Bankers. [209]

Article V. The Bankers bind themselves to obtain as soon as possible a quotation of the said shares on the French Bank market. Nevertheless, the sale of the shares by the Bankers may commence before the necessary formalities in respect of said quotation have been fulfilled.

Article VI. The Vendor agrees and binds itself to have the said shares listed on the New York Curb Exchange.

Article VII. The trust certificate to Bearer shall be lodged by the Vendor in a Parisian Bank to be nominated by the Vendor, which shall hold same at the disposal of the Bankers against payment.

Article VIII. The vendor guarantees not to issue certificates to Bearer for a larger quantity than that of four hundred fifty thousand shares above mentioned, but as the Vendor shall still hold a further one hundred thirty thousand capital shares for dis-

posal, they give by these presents to the Bankers a preference right thereto if the said Vendor decides at any time to place the same, being the said one hundred thirty thousand shares, or part thereof, in Europe.

Article IX. The Vendor binds itself to establish an office of this company at the Bankers Banking House for giving information and shall pay an annual rent of frs. 5,000, provided, however, no rental shall be charged by the Bankers unless and until they have paid for the first one hundred fifty thousand shares under this contract, upon which payment the Vendor binds itself to pay the said 5,000 frs. annually for a period of three years and upon payment by the Bankers for each succeeding one hundred fifty thousand shares, the Vendor binds itself to pay said 5,000 francs for an additional period of three years, provided, further, that the Bankers shall hold the said office properly furnished, lighted and heated and shall without charge furnish one English speaking clerk to tend especially to the business of the Vendor.

Article X. It is hereby agreed that the dividend coupons shall be payable in Paris without any deduction for commission or discount, except legal taxes, and the Bankers are hereby appointed as financial agents for the payment of the said dividends, and shall be allowed a commission of francs five per francs one thousand paid in coupons of the company. [210]

If, however, the Bankers deem it necessary to transfer the payment of the coupons to another bank,

then they shall give the latter the said francs five in respect of each frs. one thousand paid in dividends.

All disputes arising under these presents shall be referred to the Tribunal of Commerce of La Seine, which is hereby declared to be alone competent to deal with same.

Made in duplicate in French and English in Paris this — day of —, 1910.

TENABO MINING & SMELTING COMPANY,

Vendor.

By \_\_\_\_\_,

Attorney in Fact.

Given and granted unto the said attorney full power and authority to do and perform all acts and things whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as it might or could do if personally present, hereby ratifying and confirming all that its said attorney shall lawfully do or cause to be done by virtue of these presents.

In Witness Whereof, this corporation causes these presents to be signed by its president and its secretary and its corporate seal to be affixed hereto this — day of March, 1910.

TENABO MINING & SMELTING COMPANY,

By \_\_\_\_\_,

President.

By \_\_\_\_\_,

Secretary.

United States of America.

State of Utah,

County of Salt Lake,—ss.

On this —— day of March, A. D. 1910, personally appeared before me, a notary public in and for Salt Lake County, Utah, W. Mont. Ferry and John Janney, both residents of Salt Lake City, Utah, known to me to be the President and the Secretary respectively of the Tenabo Mining & Smelting Company, a corporation, that executed the foregoing instrument and each upon oath did depose that he is the officer of said corporation as above described; that he is acquainted with the seal of the said corporation, and that the seal affixed to said instrument is the corporate seal of said corporation; that the signatures to said instrument were made by officers of said corporation as indicated after said signatures, and that the said corporation executed the said instrument freely and voluntarily and for the uses and purposes therein mentioned, and that the same is executed in accordance with and by [211] authority of a resolution of its Board of Directors.

In Witness Whereof, I hereunto set my hand and notarial seal at Salt Lake City and County, State of Utah, the day and year first above written.

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Notary Public.

My commission expires ——.

Director Howard seconded said resolution. The resolution was discussed by the Board and was thereupon put to a vote and adopted unanimously, five Directors voting in the affirmative. Director Smith

offered the following resolution: Whereas, in order to comply with the proposed plan for issuing bearer certificates it will be necessary to obtain the services of a Trust Company in New York City to act for this company. Resolved, that the President and Secretary execute and deliver to P. B. Locker a special power of attorney for such purposes, as follows: Know all men by these presents, that the Tenabo Mining & Smelting Company has made, constituted and appointed and by these presents do make, constitute and appoint P. B. Locker its true and lawful attorney for this corporation and in its name, place and stead and for its use and benefit to execute and deliver a contract in words and figures substantially as follows, to wit: (Here follows a copy of the agreement marked Exhibit 6.)

Giving and granting unto said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as it might or could do if personally present, with full power of substitution and revocation, and particularly the power to substitute for the Windsor Trust Company in the foregoing agreement, any other New York Trust Company of good repute and standing, hereby ratifying and confirming all that said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In Witness Whereof, The President and Secretary have hereunto set their hands and affixed the seal of

the corporation the —— day of March, one thousand nine hundred and ten.

TENABO MINING & SMELTING COM-  
PANY,

By \_\_\_\_\_,  
President.

By \_\_\_\_\_,  
Secretary.

On being seconded by Mr. Howard, the foregoing resolution was unanimously adopted. [212]

Mr. Pingree offered the following resolution:

Resolved, that this, the Tenabo Mining & Smelting Company, a corporation organized under the laws of the State of Nevada, place on the French market, four hundred fifty thousand (450,000) shares of its capital stock of a nominal value of two (\$2.00) dollars per share, and that W. Mont. Ferry, President, and John Janney, Secretary, of the company, be and are hereby authorized to comply with all the formalities required by the laws of France for the purpose of obtaining the listing of the said securities on the market in Paris, and particularly to appoint such person as they may select as a responsible representative of the said company in France and to execute such power of attorney in his favor as may be required and all other contracts, agreements and other papers as may be required.

Resolved, that the President and the Secretary may, if they see fit, authorize P. B. Locker to appoint such responsible representative, who will act for the company as such, and may authorize the said P. B. Locker to insert the name of such representative in the afore-

said power of attorney.

Said resolution was seconded by Mr. Smith and being put to a vote was unanimously adopted. On motion the following resolution was duly seconded and unanimously adopted:

Resolved, that the President and Secretary of this company are authorized to execute on behalf of this corporation in the French language the following undertaking:

“The company, ‘Tenabo Mining & Smelting Company,’ whose head office is at Salt Lake City (Utah State), United States of America, ——— declares it to be its purpose to negotiate, exhibit for sale, issue in France and introduce to the official quotation sheets of the French Bourse four hundred fifty thousand (450,000) shares, Two (\$2.00) dollars each, bearing number ———.

The said company agrees to pay the various taxes and fees which will be exacted in France for the duration of the life of this corporation, and appoints as its responsible representative ———.”

Resolved, that P. B. Locker is hereby authorized to appoint a French citizen, or a French corporation as a responsible representative of this company and to insert the said representative’s name in the foregoing undertaking, as well as the numbers of the certificates. There being no further business the meeting adjourned.

(Signed) JOHN JANNEY,  
Secretary.

[**Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated March 21, 1910.**]

Minutes of a Meeting of the Board of Directors of the Tenabo Mining & Smelting Company.

The Directors of the Tenabo Mining & Smelting Company met at the office of the company, 601 Judge Building, Salt Lake City, Utah, at 2 o'clock P. M. on March 21st, 1910, pursuant to the following notice:

Salt Lake City, Utah, March 18, 1910.

To John Pingree, Ogden, Utah, W. Mont. Ferry, Salt Lake City, Utah, E. O. Howard, Salt Lake City, Utah, Directors of the Tenabo Mining & Smelting Co.

Gentlemen: In accordance with the by-laws of said company, the undersigned, two of the directors thereof, hereby call a meeting of the Board of Directors to be held at the office of said company, room 601 Judge Building, Salt Lake City, at 2 o'clock P. M. on Monday the 21st day of March, 1910, for the purpose of electing officers, considering amendments to the by-laws, ratifying and confirming, or rescinding previous actions of the Board, considering and acting upon propositions for the raising of funds for the development of the company's property and the carrying on of its business by the sale of treasury stock, payment of outstanding bills and such other business as may come before the meeting.

(Signed) BENNER X. SMITH,  
JOHN JANNEY,

Directors of the Tenabo Mining & Smelting Company.

The original of which is filed with the records of the company. [213]

In response to said notice there were present the following directors: W. Mont. Ferry, John Pingree, E. O. Howard, John Janney and Benner X. Smith. All of the directors being present and each of said directors being the owner, as shown by the books of the company, of not less than 100 shares of the capital stock and each of said directors having subscribed and taken the oath of office as provided by law.

Director Ferry acted as Chairman and called the meeting to order. Director Smith acted as Secretary. Thereupon it was moved, seconded and unani- mously adopted that the Board organize by the elec- tion of officers. Director Smith nominated the fol- lowing officers: W. Mont. Ferry as President, John Pingree as Vice-president, E. O. Howard for Treas- urer and Assistant Secretary. John Janney, for Secretary. There being no other nominations, a bal- lot was taken, which resulted in each of said nominees receiving five votes for the respective offices. There- upon the chairman declared that said persons so nom- inated had been duly elected to their respective offices. President Ferry assumed his place as President, and Secretary Janney his place as Secretary. The min- utes of the meetings of the directors held on March 5, 1910, were then read. Director Smith offered the following resolution and moved its adoption:

Whereas, the Board of Directors, at the meetings held on March 5, 1910, adopted certain resolutions, which have been recorded in the minutes of the Board with reference to the business of the company, and

in particular with reference to the sale of certain treasury stock and the listing of it upon the French Banking market, and authorizing P. B. Locker to represent the company and negotiate and execute certain contracts in reference thereto, and also authorizing the President and the Secretary to execute certain contracts and applications, and

Whereas, said minutes contain a correct record of the proceedings of the board, now, therefore, be it Resolved, by the Board of Directors, that the minutes of the meetings of March 5th, 1910, as the same are recorded, be and they are hereby approved, and that the actions of the Board at its meetings held on March 5th, 1910, and each and all of the several resolutions and authority as shown by the said minutes be and the same are hereby ratified, approved and confirmed with the same force and effect as if they had been adopted at this meeting.

Director Pingree seconded the motion to adopt said resolution, and upon the vote being taken said motion was unanimously carried and said resolution unanimously adopted and so declared by the chairman.

The following resolutions were unanimously adopted:

Resolved, that the Windsor Trust Company be requested to render to this company a statement of the names, residences and amounts of stock of the several stockholders of this corporation as appears from their books and [214] that the said Windsor Trust Company be requested to furnish from time to time hereafter, to this company, a list of such trans-

fers of stock as they may make.

Resolved, that the Windsor Trust Company issue a certificate of stock of this company in the name of W. S. McCornick for 2,000 shares to be charged to the treasury stock account and to be sent to E. O. Howard, Walker Brothers' Bank, Salt Lake City, Utah.

Resolved, that the certificates of stock of this company shall be signed by the President or the Vice-president and by the Secretary or the Treasurer, which officers are hereby authorized to sign the same, and that the acts of H. P. Clark and W. Mont. Ferry as President, and R. T. Badger and John Janney as Secretary, in heretofore signing stock certificates of this corporation are hereby ratified and confirmed.

Resolved, that Judge C. S. Varian be released from his liability as a subscriber to 100 shares of the capital stock of this corporation of the par value of \$200, as per request received from him.

Resolved, that a legal fee of \$300 to Benner X. Smith be approved and \$150.00 of the same be authorized to be paid. That \$550 be paid to P. B. Locker on account, and that one month's salary of \$50 be paid to each of the directors.

Resolved, that the President and Secretary of this corporation be authorized to have certificates lithographed and furnished as demanded by the needs of the Transfer Agent of this company.

There being no further business, the meeting adjourned.

(Signed) JOHN JANNEY,  
Secretary.

A meeting of the Board of Directors of the Tenabo Mining & Smelting Company regularly called, pursuant to notice, was held on the 29th day of April 1910, at 4 o'clock P. M. at the office of the company in Salt Lake City, Utah, the following members being present: W. Mont. Ferry, John Pingree, John Janney, E. O. Howard and Benner X. Smith.

Certain letters were read from Charles E. Kelly, 60 Wall Street, New York City, J. T. Clark, 37 Wall Street, New York City, and Hiram Tyree, 49 Wall Street, New York City, and the attorney for the company was by resolution unanimously adopted requested to write to the above named parties respectively as follows:

“Mr. J. T. Clark,  
37 Wall Street,  
New York City.

Dear Sir:

The Board of Directors of the Tenabo Mining & Smelting Company, at a meeting held April 9th, 1910, considered your communication of the 22nd inst., addressed to the individual members of the Board, wherein on behalf of yourself and associates, you demanded the privileges of purchasing your *pro rata* share of any treasury stock that is offered for sale at as low a price as same is offered to any one. The Board has directed me, as attorney for the company, to write as follows: The Board has entered into certain [215] negotiations and contracts and given specific authority to Mr. P. B. Locker looking to the sale of a large block of treasury stock for the purpose of raising funds to develop

and preserve the property of the company, and as to the stock covered by that transaction, the Board is compelled to decline to grant you the privilege to purchase. As to the remaining treasury stock not covered by the above negotiations it is the present intention of the Board not to offer the same for sale until the above negotiations are completed or terminated unless an emergency arises.

Further answering your inquiries, the Board has no record that this company ever furnished to the agents of the New York Curb Stock Committee a statement of its financial condition. We understand that under a former Board a statement was furnished to the Boston Curb. There is now held by the company as treasury stock 579,990 shares.

Yours truly,

Mr. Charles E. Kelly,  
60 Wall Street,  
New York City.

Dear Sir:

The Board of Directors of the Tenabo Mining & Smelting Company, at a meeting held April 29th, 1910, have directed the undersigned as attorney for the company to write you as follows:

Your favor of April 2nd, 1910, as counsel of the Gem Consolidated Mining Company, was duly received and filed. With reference to the authority of this Board to act, do respectfully request you to determine by proper proceedings the qualifications of the members and the legality of the Board as now constituted.

This Board has tried to the best of its ability to

manage the affairs of the company in the interest of all stockholders, both majority and minority stockholders, and will endeavor to continue to do so.

With reference to your demand for an option to purchase any treasury stock that may be offered for sale, the Board directs me to advise you that this Board has heretofore entered into certain negotiations and contracts and given certain and specific authority to Mr. P. B. Locker looking to the sale of a large block of the treasury stock for the purpose of raising funds to [216] develop and preserve the property of the company, and as to the stock covered by that transaction, the Board declines to grant you an option to purchase. As to the remaining treasury stock not covered by the above negotiations, it is the present intention of the Board not to offer the same until the above negotiations are completed or terminated, unless an emergency arises.

Yours truly,

Mr. H. Tyree,  
49 Wall Street,  
New York City.

Dear Sir:

At a meeting of the Board of Directors of the Tenabo Mining & Smelting Company, held at Salt Lake City, Utah, on April 29th, 1910, I was directed by the Board as attorney for the company, to answer your favor of the 2nd inst., addressed to the Board of Directors, as follows:

In reference to your alleged contract, agreements, understandings, and negotiations with Messrs. Locker and Janney, or either of them, and the con-

tracts, agreements and understandings between the Gem Company and the Tenabo Consolidated Mines Company referred to in your letter, this Board has no knowledge or record of same, and as they appear to be personal matters in which this company is not a party, it is the opinion of the Board that it should take no part in the same.

In reference to the seventh paragraph of your letter, charging Mr. Locker with selling five thousand shares of the capital stock of this company for the purpose therein stated, the Board had no knowledge of same if such transaction took place, until after it happened, when certain members of the Board were advised by wire from you and Mr. Reilly, and being without knowledge of the transaction, this Board could not have assisted or sympathized with Mr. Locker in the transaction.

And the Board desires you to understand that it has not and will not take any part or become a party to any scheme or transaction to either support or break the public market of the stock of the company, and if you have spent any money to sustain and maintain the market, either in New York or Boston, it was done without the knowledge or consent of this Board, and it expressly disclaims any responsibility therefor, and does not approve same. [217]

Replying to the eighth paragraph of your letter, the Board advised you that it has entered into certain specified agreements with Mr. Locker, looking to the sale of certain of the treasury stock of this company for the purpose of raising funds to preserve and develop the property. The authority con-

ferred upon Mr. Locker is specific and not discretionary, and it was the opinion of the Board, after investigation and deliberation that the plan adopted by the Board to finance the company and the authority given Mr. Locker were reasonable and fair, and for the best interests of the company and of the stockholders, but assuming that Mr. Locker is all that you charge him to be, he cannot under his authority bind the company beyond the express authority already granted.

Replying to the tenth paragraph of your letter, will say that if the assessment work upon the claims referred to was not performed, it was not the fault of this Board, as such assessment work should have been performed while the former Board, which was of your choice, was in office.

We will advise you, however, that the records of the company show that the assessment work upon these claims was performed and the amount of same paid.

Yours truly.

There being no further business, the meeting on motion adjourned.

(Signed) JOHN JANNEY,  
Secretary.

[**Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated July 1, 1910.**]

Minutes of a Meeting of the Board of Directors,  
Held July 1st, 1910.

A meeting of the Board of Directors of the Tenabo Mining & Smelting Company was held at the office of Stevens, Smith & Porter, Judge Building, Salt

Lake City, Utah, at 3 o'clock P. M., on Friday, the 1st day of July, 1910, pursuant to call regularly made, the following members being present: W. Mont Ferry, Benner X. Smith and John Janney. The following business was transacted: The resignation of E. O. Howard was tendered on account of his absence from the city, and the same was unanimously accepted. N. B. Robertson being a stockholder of record of not less than 100 shares, was nominated to fill the vacancy caused by the resignation of Mr. Howard, and unanimously elected.

It was moved, seconded and unanimously adopted that the by-laws of this company be amended in the following particular, namely, that by-law XVI [218] be added to the by-laws heretofore adopted by this company in words as follows:

“Any action of a majority of the Board of Directors, although not at a regularly called meeting, and the record thereof, if consented to in writing by all of the other members of the Board, shall always be as valid and effective in all respects as if passed by the Board in regular meeting.”

The following letter from Dr. Geo. J. Waggoner of Revenna, Ohio, was read:

“On Board R. M. S. ‘Adriatic.’

April 16th, 1910.

Tenabo Mining & Smelting Company,

Salt Lake City, Utah.

Gentlemen:

In confirmation of Mr. Locker's letter of April 11th, I desire to say that I have agreed to furnish

\$15,000 to pay the necessary expenses for placing the treasury stock of the company on the French market. I am accompanying Mr. Locker for the express purpose of paying over this sum in compliance with the terms of the agreement.

Very truly yours,

(Signed) GEO. J. WAGGONER."

Whereupon the following resolution was offered:

Whereas, a contract entered into between this company and P. B. Locker on the 23rd day of March, 1910, requiring that P. B. Locker, within sixty days from the date thereof furnish satisfactory proof to this company that he had entered into contractual relations with reliable persons whereby the sum of fifteen thousand (\$15,000) dollars will be furnished to the agent as needed for listing the stock of this company on the French market, and Whereas, George J. Waggoner is represented to us as a reliable person, now therefore be it resolved, that the foregoing letter from the said George J. Waggoner be accepted as satisfactory proof of the said contractual relations required to be furnished within sixty days from the date of said contract.

Said resolution was duly seconded and unanimously adopted. It was moved, seconded and unanimously adopted that the payment of the following bills be approved:

John Tyree, labor on Reliance	
claims.....	5.00
Century Ptg. Co. 1,000 letter-heads..	5.00
Union Assay Office, assaying.....	8.10

J. W. Currie, assaying.....	3.00
Postal Tel. Co. Cables & Telegrams..	14.06
Windsor Trust Co. for furnishing list of stockholders.....	10.00
Total.....	<u>\$90.16</u>

There being no further business the meeting on motion adjourned.

(Signed) JOHN JANNEY,  
Secretary.

**[Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated September 21, 1910.]**

Minutes of a Special Meeting of the Board of Directors, Held Sept. 21, 1910.

A special meeting of the Board of Directors of the Tenabo Mining & Smelting Company was held at the office of Stevens, Smith & Porter, Judge Bldg., Salt Lake City, Utah, at 2:30 o'clock P. M., on Wednesday, September 21st, 1910, pursuant to call regularly made, the following members being present: [219] W. Mont. Ferry, Benner X. Smith, and John Janney. The following business was transacted:

The resignation of Director N. B. Robertson to take effect at the pleasure of the Board was tendered and upon motion duly made and seconded was unanimously accepted. Mr. E. O. Howard was elected by unanimous vote as director and treasurer to fill the vacancy created by the resignation of N. B. Robertson. A letter from Windsor Trust Company proposing to submit bids for the engraving of

certificates was read. The secretary was directed to request the Windsor Trust Company to submit bids. The meeting on motion adjourned until Friday, September 23rd, at 2:30 P. M.

(Signed) JOHN JANNEY,  
Secretary.

**[Defendant's Exhibit "L"—Minutes of Meeting of  
Directors of Tenabo M. & S. Co., Dated September 23, 1910.]**

Minutes of a Special Meeting of Directors, Sept., 23,  
1910.

A Special meeting of the Board of Directors of the Tenabo Mining & Smelting Co., was held at the office of Stephens, Smith & Porter, Judge Building, Salt Lake City, Utah, at 2:30 P. M., on Friday, Sept. 23d, 1910, pursuant to adjournment of previous meeting, the following members being present: W. Mont. Ferry, John Pingree, E. O. Howard, Benner X. Smith and John Janney. The following business was transacted:

Letters from P. B. Locker in Paris were read to the Board, also a copy of a contract with certain bankers in Paris together with an Underwriting Agreement, from which it appeared that the expense incident to the sale of the initial block of treasury stock, namely, 150,000 shares, would be \$30,000 instead of \$15,000 as formerly contemplated.

Thereupon the request of Mr. Locker that the company pay the expense incident to the sale of the first block of stock was discussed. It was moved by Mr. Pingree, seconded by Mr. Howard that the contract between Mr. Locker and this company be

amended and modified in the following particular, Namely: That for the first 75,000 shares, or any part thereof, sold under a contract dated March 22d, 1910, entered into between this company and P. B. Locker, this company shall accept fifteen cents less per share than provided in said contract, and that for the next 75,000 shares sold under said contract this company shall receive fifteen [220] cents more per share than provided in said contract, thus making the average price of the stock net the company the same figure and at the same time allow P. B. Locker a larger margin with which to defray expenses of placing the initial block of 75,000 shares. Said motion was duly carried, directors Ferry, Pingree, Howard and Smith voting in the affirmative, Director Janney not voting, being excused. The following resolutions were unanimously adopted:

Resolved, that the Windsor Trust Company be and is hereby authorized and instructed to issue four hundred and fifty thousand (450,000) shares of treasury stock to itself as Trustee under and by virtue of a certain stock trust agreement authorized to be made and executed on behalf of this company by and between this company, the Windsor Trust Company and a French Banking House to be satisfactory to the Windsor Trust Company in a special power of attorney conferred upon P. B. Locker, attorney in fact, at a meeting of this Board of Directors held on the 5th day of March, 1910.

Resolved, that the Windsor Trust Company be authorized to hold said four hundred and fifty thousand (450,000) shares of treasury stock to secure the

issue of them by four hundred and fifty thousand (450,000) shares in bearer certificates in a denomination of ten (10) shares each to be issued in accordance with the custom of the French market.

The meeting then adjourned to meet in the same office on Saturday, October 8th, 1910, at 2:30 P. M.

(Signed) JOHN JANNEY,  
Secretary.

**[Defendant's Exhibit "L"—Minutes of Meeting  
of Directors of Tenabo M. & S. Co., Dated  
October 10, 1910.]**

Minutes of Directors' Meeting—Oct. 10, 1910.

A meeting of the Board of Directors of the Tenabo Mining & Smelting Company was held at the office of Stephens, Smith & Porter, Judge Building, Salt Lake City, Utah, at 11 A. M. on Monday, October 10th, 1910, pursuant to adjournment of previous meeting, the following named members being present: E. O. Howard, Benner X. Smith, and John Janney. The following resolution was unanimously adopted:

Resolved, that Lebanon M. Huntington and Fred Billman of the Windsor Trust Company, New York City, be and they are hereby elected First Assistant and Second Assistant Secretaries, to sign for and on behalf of this corporation the Trustee Certification endorsed by the company upon the French bearer certificates to be issued by the Windsor Trust Company, Nos. 1 to 45,000, inclusive.

Hereby rectifying and confirming the signatures of the said Lebanon M. Huntington and Fred Billman to the aforesaid trustee certificates. On mo-

tion the meeting adjourned to meet October 29th, at 9:30 A. M. at the same place.

(Signed) JOHN JANNEY,  
Secretary. [221]

**[Defendant's Exhibit "L"—Minutes of Meeting  
of Directors of Tenabo M. & S. Co., Dated  
October 29, 1910.]**

Minutes of Special Meeting of Directors—Oct. 29th,  
1910.

A special meeting of the Board of Directors of the Tenabo Mining & Smelting Co. was held, pursuant to adjournment of previous meeting, at 9:30 A. M., on Saturday, October 29th, 1910, in the office of Stephens, Smith & Porter, in the Judge Building, Salt Lake City, Utah, the following members being present: W. Mont. Ferry, E. O. Howard, Benner X. Smith and John Janney. The following resolutions were adopted:

Whereas, on the 5th day of March, 1910, this Board of Directors authorized the execution of a certain power of attorney to P. B. Locker conferring authority to enter into a certain contract binding this company to the sale of a block of treasury stock with proposed bankers in France, which said power of attorney was afterwards executed and delivered to the said P. B. Locker, and

Whereas, the said P. B. Locker has advised this Board that, acting under said power of attorney, he has executed a contract with Bernard Desouches of 148 Avenue Malakoff, Paris, France, in words and figures following, to wit:

Between the undersigned: The Tenabo Mining &

Smelting Company, a corporation organized under the laws of the State of Nevada, United States of America, with a capital stock of 3,000,000 (three million) dollars, the principal place of business of which is at Salt Lake City, in the State of Utah, United States of America, by Mr. Payton B. Locker, attorney in fact of said company, acting under the powers vested in him by a power of attorney authorized and executed in accordance with a resolution of the Board of Directors of said company, adopted at a special meeting held on the Fifth day of March, 1910, hereinafter called the Vendor, of the one part,

And Mr. Bernard Desouches, of 148 Avenue Malakoff, Paris, hereinafter called the Banker, of the other part. It has been arranged and agreed as follows:

The Tenabo Mining & Smelting Company, being desirous of placing four hundred fifty thousand shares of its capital stock in Europe of a nominal value of two dollars each, and the Banker after having examined the papers of said company and the reports of the engineers agrees to lend his support and the following arrangements have been made between the parties.

Article I. The Vendor agrees to supply through the Banker to the Minister of Finances and to the Administration for the Registration of Documents State Property and Stamp in Paris for the assessment of the duties payable in France on the shares (Abonnement au timbre) and to furnish all necessary documents required by the laws of the French Republic. It further agrees to supply to the Banker all documents necessary for publication prescribed

by the laws in the Official Journal of the French Republic. It further agrees to abide by the formalities for obtaining admission of the shares upon the French Banking market. The Banker, on the other hand, binds himself to take the various steps necessary in respect of these various formalities, so that it may be accomplished as soon as the Vendor will have accepted the Underwriting subscription mentioned under Article III hereafter.

Article II. The cost in respect of application for the assessment of the duties payable in France on the shares and for the deposit of guaranty in respect of annual taxes, and further the cost of publication in the Official Journal and for the obtaining the free circulation of the said shares in France, together with the expenses attached to the quotation of the shares and costs of printing the same to Bearer, as also all cost of advertising in the daily press of Paris and the provinces, or in other financial papers, and generally the cost of issuing, advertising and placing the said shares in the French public are altogether reckoned to amount to a sum of one hundred and fifty thousand francs. This amount [222] or any part thereof, and any expense, if any, exceeding this amount the Vendor does not agree to supply or pay excepting as herein recited in Article V, and the Vendor is not, nor shall it be in any way liable therefor except as recited in said Article V.

Article III. The Vendor hereby gives to the Banker an exclusive option from the date of the signature of the present agreement until September 30th, 1910, to purchase four hundred and fifty thou-

sand shares of its capital stock of the par value of two dollars each at a price of seven francs per share, under the terms and conditions as hereinafter set forth.

In consideration of the said option and by way of exercise in part of their said rights of option, the Banker agrees that he will undertake to form an underwriting syndicate to which this contract will be assigned, and will endeavor to secure subscriptions to be submitted to the Vendor and acceptable to him in an amount of seventy-five thousand shares of the stock forming the subject of this option or any lesser amount which the Vendor may decide to accept in his discretion the subscriptions to be secured from reliable parties and under the terms and conditions set forth in the attached form marked Exhibit "A."

It is expressly agreed that out of said 75,000 (seventy-five thousand) shares a minimum number of 25,000 (twenty-five thousand) shares must be so subscribed at the latest on August 31st, 1910, and it is further agreed that the Vendor will have in the case of each individual subscription the right to accept or refuse the same in his discretion.

In the event of the said banker not having on or before September 30th, 1910, so secured subscriptions which shall have been accepted by the Vendor in an amount of seventy-five thousand shares, or any other accepted by the Vendor at the price of seven francs per share, out of which 25,000 (twenty-five thousand) shares shall have been subscribed before

August 31st, 1910, then and in that case the option hereinabove recited to stand annulled and canceled and without liability on the part of either party hereto.

On the other hand, it is agreed and understood that provided the Banker does secure such subscription which shall have been accepted by the Vendor after they shall have been submitted to him in an amount aggregating seventy-five thousand shares of any other amount accepted by him on or before September 30, 1910, the Vendor hereby gives to the Banker an extension of the option hereinabove recited until December 31st, 1910. The Underwriting Syndicate to whom said option shall have been assigned shall pay the Vendor for the said 75,000 (seventy-five thousand) shares on or before December 31st, 1910, at the price of seven francs per share, payable against delivery as thereafter explained.

In the further event of the said banker not having, through the Underwriting Syndicate on or before December 31st, 1910, purchased and paid for an aggregate number of one hundred and fifty thousand of said stock (including the seventy-five thousand shares as above mentioned) at the price of seven francs per share, then and in that case the option hereinbefore recited to stand annulled and cancelled, notwithstanding the obligation on the part of the Underwriters to pay for seventy-five thousand shares so purchased by them.

On the other hand in the event of the said banker having on or before December 31st, 1910, so purchased and paid for one hundred and fifty thousand

shares of the said stock at the price of seven francs per share through the Underwriting Syndicate, the vendor hereby gives to the banker a further extension of the option on the remaining shares until March 31st, 1911.

In the still further event of the said banker not having through the Underwriting Syndicate on or before March 31st, 1911, purchased and paid for a further one hundred and fifty thousand shares (making altogether three hundred thousand shares) at the price of seven francs per share, then and in that case the option hereinbefore recited to stand annulled and cancelled.

On the other hand in the event of the said banker having on or before March 30th, 1911, so purchased and paid for a total of three hundred thousand shares at the price of seven francs per share through said Underwriting Syndicate, the Vendor hereby gives to the banker a further extension of the option on the remaining shares for three months, and until June 30th, 1911. [223]

Article IV. The shares shall be delivered by a Trustee and shall represent nominative certificates deposited by the company in the hands of the said trustee. The shares so deposited shall be to Bearer under seal of the company with coupons attached and conjointly signed by the duly authorized officers of the company and the trustee. The said four hundred and fifty thousand shares to be delivered shall be in the denomination of certificates to Bearer of ten shares each.

Article V. It is agreed and understood that

the vendor will repay from money received by it, if any, under this contract and not otherwise an agreed amount of (150,000) one hundred fifty thousand francs provided in Article II and which shall have been paid by the banker or his assignees; and to this end will instruct the bank holding against payment the certificates of stock as provided in Article VII to pay from the first money received by it under this contract a total of one hundred and fifty thousand francs, the said one hundred and fifty thousand francs to be paid to the Managing Committee of the Underwriting Syndicate.

Article VI. The banker binds himself to obtain as soon as possible a quotation of the said shares on the French Bank market of the Code Vidal or Desfosses, nevertheless the sale of the shares by the banker may commence before the necessary formalities in respect of said quotation have been fulfilled.

Article VII. The Trust Certificates to Bearer shall be lodged by the Vendor in a Parisian Bank appointed by the Vendor, which shall hold the same at the exclusive disposal of the banker or his assignees against payment.

Article VIII. The Vendor guarantees not to issue certificates to Bearer for a larger quantity than that of four hundred and fifty thousand shares above mentioned, but as the Vendor still holds a further block of capital shares for disposal be given by these presents to the banker a preference right thereto if the said Vendor decided at any time to place the same in Europe, that is to say in case the whole four hundred and fifty thousand shares forming the object of the

option given to the banker under Article III of the present agreement shall have been placed within the time of the option, the Vendor will give as to any further shares a right of preference to the banker at the same price and at the same conditions which may be offered by any other party, the banker in such contingency to declare within one month whether they will accept or not the offer thus made to him by the Vendor.

Article IX. The Commercial Court of the Seine will have jurisdiction as to any question which may arise in the construction of the present agreement or at the occasion of its execution.

Article X. The Registration expenses of the present contract, as also any fines, will be paid by the party who shall have rendered such payments necessary.

Made in duplicate in French and English in Paris this first day of August, 1910.

Read and approved.

TENABO MINING & SMELTING CO.

(Signed) By P. B. LOCKER,

Atty. in Fact.

(Signed) BERNARD DESOUCHES.

EXHIBIT "A."

Dear Sirs:

In reply to the offer you have made to me, I hereby subscribe to the Underwriting Syndicate on the following conditions:

Article I. An underwriting syndicate is formed between the persons signing the present form for the following purposes: 1. To purchase 75,000 (seventy-

five) ordinary shares of the Tenabo Mining & Smelting Co. of a nominal value of \$2.00 (two dollars) each at a price of seven francs per share. 2. The sale of the said shares before those referred to under No. 3 hereafter. 3. The right to exercise the option given to Mr. Bernard Desouches for 375,000 (three hundred and seventy-five thousand) further shares of the same company and the sale thereof.

Article II. All shares subscribed by the underwriters, members of this syndicate, will remain blocked for sale until the 30th of June, 1911, together with the shares given in option to Mr. Bernard Desouches by The [224] Tenabo Mining & Smelting Co. and amounting to a further block of 375,000 (three hundred and seventy-five thousand) shares, also at the price of seven francs per share; this option is contained in an agreement passed between the Tenabo Mining & Smelting Co., and Mr. Bernard Desouches, dated the first day of August, 1910.

Article III. The Underwriting Syndicate will be managed by a committee of three members, to wit: Mr. Coleman, the Manager of the Banque Franco-American, representing the Tenabo Mining & Smelting Co., and two others to be elected by the majority of the members of the syndicate, every one thousand giving a right to one vote. Until such election takes place, Mr. Coleman will have alone all powers of management and will summon the members of the syndicate as soon as completed for the purpose of electing the two other members of the Managing Committee.

Article IV. The profits resulting from the negotiations of said 450,000 (four hundred and fifty thou-

sand) shares (to wit, the 75,000—seventy-five thousand shares purchased by the underwriters and the 375,000—three hundred and seventy-five thousand—given in option by the company) will after deducting expenses be divided as follows:

10% (ten per cent) to Mr. Bernard Desouches as holder of the option.

10% (ten per cent) to the Managing Committee in remuneration of its services.

80% (eighty per cent) to the underwriters, members of the syndicate, in proportion of the number of shares subscribed.

Article V. The Managing Committee shall have full power with regards to the sale of the aforesaid 450,000 (four hundred and fifty thousand) shares for the common account of the members of the syndicate and also for the use of any sums put at the disposal of the syndicate to cover publicity expenses, costs of issue and the expenses with the legal and fiscal formalities and the obtaining of a quotation. These expenses, which have been estimated at a sum of one hundred and fifty thousand francs, will be paid by the company out of the proceeds of the first shares sold and until such sales have been effected the funds required will be supplied to the Committee under a contract between Mr. Payton B. Locker and Mr. Desouches.

Article VI. Each member of the syndicate, when signing the present syndicate agreement, shall have the right to exclude from sale all or any part of the shares subscribed by him, but these shares so excluded shall be paid for on December 31st, 1910, and

shall be deposited with the syndicate until its liquidation.

Article VII. If the whole of the 75,000 (seventy-five thousand) shares subscribed by the underwriters, members of the syndicate, and not excluded from sale should not be all sold by the syndicate before the 31st of December, 1910, the balance will be paid by all the syndicate members in proportion to the number of shares subscribed by them and not excluded from the sale, but the said shares shall remain deposited with the syndicate until its liquidation. The present document contains a binding engagement on the part of the underwriters, members of the syndicate, to pay for the shares which shall be so divided between them, the said payment to be made by them on the 31st of December, 1910. All shares which shall have been taken up and paid for by members of the syndicate at the price to be fixed by the Managing Committee will be deducted from this liability.

Article VIII. The syndicate will be dissolved upon the realization of its object and not later than June 30th, 1911. It may, however, be prolonged by the Managing Committee for a period not exceeding six months.

The undersigned, after having duly noted the conditions of the foregoing underwriters syndicate agreement, hereby adheres to the same and purchases on the conditions aforesaid ——— shares of \$2 (two dollars) each at the price of seven francs per share

of which ——— shares be excluded from sale.

Paris this ———, 1910.

Approved the above form.

TENABO MINING & SMELTING CO.

(Signed) P. B. LOCKER,

Atty. in Fact.

(Signed) BERNARD DESOUCHES.

Now, therefore, be it resolved that the execution of the aforesaid contract with the said Mr. Bernard Desouches be and the same is hereby ratified and [225] confirmed, and

Resolved that a certified copy of this resolution be forwarded by registered mail to the said Bernard Desouches and also to P. B. Locker.

Whereas under a contract authorized by this Board on March 5th, 1910, to be made between this company and P. B. Locker, it is required as follows:

“Then ninety days to effect his negotiations in Paris or elsewhere and procure the execution of a satisfactory contract as set out in said special power of attorney; provided that in computing these periods of time the months of June, July and August shall be excepted because of the summer season.”

Now, therefore, be it resolved that the said Locker has complied with the above terms of his contract in furnishing a satisfactory contract within the time required.

Resolved, that the Windsor Trust Company be and is hereby authorized and instructed to forward to the Banque Franco-Americane, 22 Place Vendome, Paris, France, French Bearer Certificates heretofore authorized under and by virtue of a certain trust agree-

ment with the said Windsor Trust Company, authorized by this Board at its meeting on March 5th, 1910, said French bearer certificates being in a denomination of ten shares each for four hundred and fifty thousand shares, numbered from 1 to 45,000 inclusive, and that the same be insured and otherwise protected as is usual in remitting such securities, and that remittances be made in such installments as may be convenient to the Windsor Trust Company and the Banque Franco-Americane.

Together with instruction that the said Banque Franco-Americane hold the aforesaid French Bearer certificates for and on behalf of the Tenabo Mining & Smelting Company and deliver the same to Bernard Desouches of 148 Avenue Malakoff, Paris, France, or to his order, upon the payment of seven francs per share, and not otherwise, said seven francs per share to be deposited to the credit and subject to the order of the Tenabo Mining & Smelting Company in writing and signed by its president and its treasurer, as per specimen signatures following: The president will sign, ————. The treasurer will sign, ————; and

Resolved, that a certified copy of the above resolutions be sent to the Windsor Trust Company of New York and to the Banque Franco-Americane, Paris, France.

Resolved, that T. L. Zimmerman, Jr., C. Knapp, L. W. Chandler and Geo. H. Eastmont be and they are hereby elected, constituted and appointed assistant secretaries and that T. L. Zimmerman, Jr., and C. Knapp be and they are hereby elected, constituted

and appointed Vice-presidents as well as assistant secretaries for the purpose of signing, for and on behalf of this company, said company's certification on the issue of French Bearer Trustee Certificates, Nos. 1 to 45,000 inclusive, for circulation on the French market, and also for signing nominative certificates in like [226] amount and with like numbers to be held by the said Windsor Trust Company against the presentation of the French Bearer shares.

Resolved, that the secretary of this company be empowered to authorize the Union Trust Company of New York to register the four hundred and fifty thousand (450,000) shares of stock held by the Windsor Trust Company in certificates of ten shares each against the issue by the said Windsor Trust Company of French Bearer shares, and

Resolved, that the secretary use his best efforts to postpone as long as may be all expense incident to said registration.

The meeting on motion adjourned until Monday, November 7th, 1910, to meet at the same place at 2:30 P. M.

(Signed) JOHN JANNEY,  
Secretary.

**[Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated November 7, 1910.]**

Minutes of a Special Meeting of Directors—November 7th, 1910.

At an adjourned meeting held at 2:30 P. M. on Monday, November 7th, 1910, Directors Howard, Smith and Janney being present, the following reso-

lutions were unanimously adopted as an aid to the secretary in carrying out the resolution passed at the previous meeting relating to the registry of the American of nominative certificates held by the Windsor Trust Company against the French Bearer shares:

Whereas, the Windsor Trust Company has been heretofore authorized to issue to itself or order four hundred and fifty thousand (450,000) shares of the treasury stock of this corporation as a basis for the issue by the said Windsor Trust Company of French Bearer shares in like amount, and

Whereas, acting thereunder the said Windsor Trust Company has issued to its order a certificate of stock for four hundred fifty thousand (450,000) shares, now therefore be it

Resolved, that the Union Trust Company of New York City be and the same is hereby authorized to register the aforesaid certificate for 450,000 shares of stock, charging the same to the treasury stock of this corporation.

Whereas, a certificate of 450,000 shares of the treasury stock of this company has been issued to the order of the Windsor Trust Company to be held by the said Windsor Trust Company to secure an issue of French Bearer Trustee certificates in denominations of ten shares each for 450,000 shares, to wit, trustee certificates Nos. 1 to 45,000 for ten shares each;

Whereas, the Windsor Trust Company will keep upon deposit corresponding nominative certificates Nos. 1 to 45,000 (ten shares each) signed by duly

authorized officers of this company in blank, and held by the said Windsor Trust Company for delivery to the holders of French Bearer certificates upon demand, presentation and cancellation of the said bearer shares, and

Whereas, upon delivery of the aforesaid nominative certificates to the lawfully entitled owner thereof it will become necessary to cancel the certificate of 450,000 shares of stock originally issued and register the nominative certificate given in exchange for the bearer or trustee certificate, now therefore be it

Resolved, that the Union Trust Company of New York is hereby authorized to register the nominative certificates when and as the same may be presented for registration by the holders of the French bearer trustee certificates after demand and presentation to the Windsor Trust Co., and the [227] cancellation by them of the said French bearer trustee certificates; it being the purpose of this resolution to confer authority upon the said Union Trust Company to register the aforesaid nominative certificates as and when they are demanded by and issued to the holders of and in exchange for French bearer shares and not otherwise. The said 450,000 shares, or so much thereof as may remain after prior transfers, in the meantime being registered in the name as now appearing upon the registration books of this company.

On motion the meeting adjourned to meet at 10:30 A. M., on Wednesday, November 16th, 1910, at the same place.

(Signed) JOHN JANNEY,  
Secretary.

**[Defendant's Exhibit "L"—Minutes of Meeting  
of Directors of Tenabo M. & S. Co., Dated  
November 16, 1910.]**

Directors' Meeting of Nov. 16th, 1910.

Held in the office of Stephens, Smith & Porter in the Judge Building, Salt Lake City, Utah, at 10:30 A. M. on Wednesday, November 16th, 1910, pursuant to adjournment of previous meeting, there being present,—W. Mont. Ferry, Benner X. Smith and John Janney, and the following business was transacted: The following resolutions were unanimously adopted:

Whereas, at a meeting of the Board of Directors of this company duly held on the 29th day of October, 1910, a contract between this company and Mr. Bernard Desouches of Paris, France, was approved, containing the following provision:

Article V. It is agreed and understood that the Vendor will repay from money received by it, if any, under this contract and not otherwise an agreed amount of (150,000) one hundred and fifty thousand francs provided in Article II and which shall have been paid by the banker or his assignees; and to this end will instruct the bank holding against payment the certificates of stock as provided in Article VII to pay from the first money received by it under this contract a total of one hundred and fifty thousand francs to be paid to the Managing Committee of the Underwriting Syndicate. Now therefore be it

Resolved, that La Banque Franco-Americane, 22 Place Vendome, Paris, France, be and the same is

hereby authorized and directed to pay to the managing committee of the syndicate underwriting the stock issue of the Tenabo Mining & Smelting Company, as represented by J. H. Coleman, manager of the said committee, being the same J. H. Coleman who is also manager of the Banque Franco-Americane; said Underwriting Syndicate being the same referred to in a contract between this corporation and Mr. Bernard Desouches, dated August 1st, 1910, an amount not to exceed one hundred and fifty thousand (150,000) francs and charge the same to such deposits as are made to the credit of the Tenabo Mining & Smelting Company and subject to the order of said company.

The aforesaid payments shall be made from the first money credited from the sale of stock and may be made in installments from time to time as money is deposited to the credit of the said Tenabo Mining & Smelting Company, but in no case shall the aggregate payments exceed a total of one hundred and fifty thousand (150,000) francs and such payment shall be made only upon a statement of expenses being filed with the said [228] Banque Franco-Americane by the said J. H. Coleman, representative of the Underwriting Syndicate, which statement shall have been approved by Mr. Payton B. Locker of the Hotel Chatam, Paris, France, the above-authorized payments to be limited to the amount of expenditure as shown in the said statement.

Whereas, the secretary of this company has received a communication from Mr. Payton B. Locker requesting that commissions be paid to Messrs. J. H.

Coleman, Henry Iselin, George Kroll and Wm. Ballin, amounting in the aggregate not to exceed a total of two (2) francs per shares, and

Whereas, the price provided in the contract for the sale of the stock is more than two francs per share over and above the price required of said Peyton B. Locker that the stock shall net the company under a contract between this company and the said Peyton B. Locker, now therefore be it

Resolved, that the request of Peyton B. Locker be carried out and that the Franco-Americane Banque be authorized to pay to the said Messrs. Coleman, Iselin, Kroll and Ballin an amount aggregating not to exceed two (2) francs per share as commission on each share sold after the sale of the first twenty-one thousand and four hundred and twenty-nine (21,429) shares upon the order of the said Peyton B. Locker, and that if he gives such order the amounts are to be charged to his account.

In order to carry out the foregoing assignments in part of commission of Peyton B. Locker, the following resolution was offered, duly seconded and unanimously adopted:

Resolved, that the Franco-Americane Banque be and the same is hereby authorized and directed to pay to Messrs. J. H. Coleman, Henry Iselin, George Kroll and Wm. Ballin, certain sums of money hereinafter designated upon the order of Mr. Peyton B. Locker of the Hotel Chatam, Paris, France, from moneys deposited to the credit of the Tenabo Mining & Smelting Company with the said Franco-Americane Banque from the sale of the said company's

stock under a contract between the said company and Mr. Bernard Desouches, upon the following conditions, namely:

1st. The proceeds of the sale of the first twenty-one thousand four hundred and twenty-nine (21,429) shares, namely one hundred and fifty thousand (150,000) francs, shall be placed to the credit of the said Tenabo Mining & Smelting Company, and no part thereof shall be subject to this order.

2nd. For each sale after the said twenty-one thousand four hundred twenty-nine (21,429) shares, this order upon the company's funds shall become effective in an amount not to exceed the aggregate two (2) francs for each and every share of stock sold in excess of twenty-one thousand four hundred and twenty-nine.

The purpose of this resolution is that there shall remain to the credit of the Tenabo Mining & Smelting Company not less than five (5) francs per share and that there shall be disbursed to Messrs. Coleman, Iselin, Kroll and Ballin an amount not to exceed in the aggregate two (2) francs from each and every share of stock sold after the sale of the first 21,429.

Resolved, that a certified copy of this resolution be forwarded to Mr. Peyton B. Locker.

On motion meeting adjourned to meet at 11 o'clock A. M. on Wednesday, December 6th, 1910, at the same place.

(Signed) JOHN JANNEY,  
Secretary.

[**Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated December 6, 1910.**]

Directors' Meeting of Dec. 6th, 1910.

Held pursuant to adjournment of previous meeting at 11:00 o'clock A. M. on Tuesday, December 6th, 1910, in the office of Stephens, Smith & Porter, there being present: W. Mont Ferry, E. O. Howard, Benner X. Smith and John Janney. The matter of assessment work for 1910 on the company's property was discussed. Mr. Smith moved that Mr. Janney be appointed to negotiate [229] a loan of \$3000 on the company's note to be secured if necessary by a mortgage on the property. Motion was seconded by Mr. Howard and unanimously adopted. The following resolution was adopted:

Resolved, that the resolution passed at the Directors' meeting of Oct. 29th, 1910, appointing secretaries and vice-presidents for the purpose of signing French certificates and the nominative certificates corresponding thereto be amended to read as follows:

Resolved, that T. L. Zimmerman, Jr., C. Knapp, L. W. Chandler and Geo. H. Eastman be and they are hereby elected, constituted and appointed assistant secretaries, and that T. L. Zimmerman, Jr., be and he is hereby elected, constituted and appointed vice-president, as well as assistant secretary, also that C. Knapp be and he is hereby elected, constituted and appointed second vice-president, as well as assistant secretary for the purpose of signing for and on behalf of this company said company's certifi-

cation on the issue of French bearer trustee certificates, Nos. 1 to 45,000, inclusive, for circulation on the French market, and also for the purpose of signing nominative certificates in like amount with like numbers to be held by the Windsor Trust Company of New York against the presentation of the French bearer shares.

A letter under date of Nov. 17th, 1910, from the Union Trust Company of New York requested that their fee be raised from \$150 a year to \$250 a year was read and discussed. It was moved, seconded and unanimously adopted that said fee be raised from \$150 to \$250 a year for services as registrar, beginning Nov. 1st, 1910, the same to be paid semi-annually.

The following bills were approved and ordered paid. Century Printing Co., \$12.00; Postal Tel. Co., .75. On motion meeting adjourned to meet Dec. 13, 1910, at 2:30 P. M.

(Signed) JOHN JANNEY.

**[Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated December 13, 1910.]**

Directors' Meeting, Dec. 13th, 1910.

Held pursuant to adjournment of previous meeting at 2:30 P. M. on Tuesday, December 13th, 1910, at the office of Stephens, Smith & Porter, there being present, W. Mont Ferry, Benner X. Smith, E. O. Howard and John Janney. The following resolution was unanimously adopted:

Resolved, that the president and secretary of this company be and they are hereby authorized and

directed to make a loan of \$1500 and to execute on behalf of the company a negotiable note for said amount payable six months after date to the order of W. H. Shearman with interest at the rate of 10 per cent per annum, payable at the Merchants Bank of Salt Lake City, Utah, and to execute a mortgage on the properties of this corporation securing the aforesaid obligation, and be it further

Resolved, that in consideration of the aforesaid loan this corporation pledge to the Merchants Bank that of the funds received by said corporation it will deposit with the said Merchants Bank an amount equal to that deposited with such other bank in Salt Lake City, as this corporation may select as depository, and that a bonus of 1,000 shares of treasury stock be given in consideration of said loan, and

Resolved, that the Windsor Trust Company be authorized and requested to issue two certificates of 500 shares each, one in the name of W. H. Shearman and the other in the name of John C. Dugan, and to forward same to E. O. Howard, treasurer.

Resolved, that P. B. Locker be and he is hereby authorized to extend the date of the payment for each block of one hundred and fifty thousand (150,000) shares of stock provided in the contract, entered into between this corporation by P. B. Locker, its attorney in fact, of the one part, and Mr. Bernard Desouches, of the other part, dated August 1st, 1910; said extension of time to be limited to a period of forty-five days in the case of each and every payment provided in the said contract; said extension of time to be [230] given provided the

said Bernard Desouches makes a request in writing to the said P. B. Locker that such extension of time be granted and that said request shall provide that such extension of time shall in no way effect or nullify any of the other provisions or terms of said contract, or terms.

On the last resolution, the vote was as follows: Ayes: Messrs. Ferry, Howard and Smith. Mr. Janney not voting, being excused. There being no further business meeting on motion adjourned.

(Signed) JOHN JANNEY,  
Secretary.

**[Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated February 8, 1911.]**

Special Meeting of Directors—Feb. 8th, 1911.

A special meeting of the Board of Directors was held pursuant to call and upon waiver of notice at the office of Stephens, Smith & Porter, Judge Building, Salt Lake City, Utah, at 5 o'clock P. M. on Wednesday, February 8th 1911, the following members being present: W. Mont. Ferry, John Pingree, E. O. Howard, Benner X. Smith and John Janney. The following resolution was offered by Mr. Howard, seconded by Mr. Pingree and carried, the vote being as follows: Ayes, Messrs. Ferry, Pingree, Howard and Smith. Mr. Janney not voting, being excused.

Whereas, from a letter recently received from the Windsor Trust Company, it appears that the French bearer certificates have not all been forwarded to France and that other unforeseen delays have re-

tarded the progress of our negotiations with French bankers and rendered it unfair to demand of them payment upon the day and dates specified in the contract entered into between said bankers and this company, now therefore be it

Resolved, that P. B. Locker be and he is hereby authorized to extend the date of the payments of each block of 150,000 shares of stock provided in a contract entered into between this corporation by P. B. Locker, its attorney in fact, of the one part, and Bernard Desouches, of the other part, dated August 1st, 1910, said extension of time to be limited to a period of ninety days in the case of each and every payment provided for in the said contract; said extension of time to be given, provided the said Bernard Desouches makes a request in writing to the said P. B. Locker that such extension of time be granted and stating that such extension of time shall in no way effect or nullify any of the other provisions or terms of said contract.

It is understood that this extension of ninety days is cumulative and in addition to the extension of forty-five days formerly given, and be it further,

Resolved, that P. B. Locker be instructed not to grant the aforesaid extension unless it be imperative to do so and in that case to grant only so much thereof as may seem required under the circumstances, but that said P. B. Locker be allowed full discretion as to whether to grant the extension and as to how much of said ninety days be given.

On motion duly made and carried, it was ordered that \$200 be paid to the secretary of the company on

account of salary for four months.

On motion duly made and carried, the following bills were authorized to be paid to W. H. Shearman; \$4.90 for bringing abstract of title to company's property down to date and \$20 attorney's fee for examining abstract. [231]

On motion duly made and carried the payment of \$50 to J. W. Wade under an order from P. B. Locker was approved, and it was ordered that said \$50 be deducted from the amount due this company to the said Locker. The following resolution was unanimously adopted:

Whereas, negotiations for a large block of treasury stock of this company in Paris, France, are making satisfactory progress,

Whereas, under the arrangements to sell said stock certain persons in France have a right to be represented at meetings of stockholders of this company and considerable time is required for communications between Salt Lake City and Paris, France.

Whereas, ninety days' notice would be a reasonable time for calling special meetings of stockholders, thus allowing time for notice to reach the holders of French bearer shares, now therefore be it

Resolved that article II of the by-laws of this corporation be amended so as to read as follows:

“The annual meeting of the stockholders, until otherwise provided by resolution of the Board of Directors, shall be held at the principal office of the company at Salt Lake City, Utah, on the second Monday in February of each year at 2 o'clock in the afternoon of said day. Notice of the holding of such

meeting shall be given by the president or the secretary by a written notice to each stockholder of record at least thirty days next prior to the date of the holding of such meeting by mailing to each of said stockholders of record a written notice of the time and place of such meeting and in general terms the business to be transacted thereat, addressed to the last known address of each of said stockholders respectively,

“Special meetings of the stockholders may be called by the president or the secretary upon request of the Board of Directors or upon the request of the holders, as shown by the books of the company, of one-third of the outstanding capital stock. Notice of the holding of such meeting shall be given by the president or the secretary by a written notice to each stockholder of record at least ninety days next prior to the date of the holding of such meeting by mailing to each of said stockholders of record a written notice of the time and place of such meeting and in general terms the business to be transacted thereat, addressed to the last known address of each of said stockholders respectively.”

There being no further business meeting on motion adjourned.

(Signed) JOHN JANNEY,  
Secretary.

[Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated May 3, 1911.]

Special Meeting of Directors—May 3, 1911.

A special meeting of the Board of Directors was

held at 12 o'clock noon on Wednesday, May 3d, 1911, at 601 Judge Building, Salt Lake City, Utah, pursuant to a notice. There were present at the meeting W. Mont. Ferry, E. O. Howard and Benner X. Smith. John Janney, Secretary, being absent, Director Smith was unanimously elected to act as secretary of the meeting.

Mr. Smith presented a communication from Mr. Pingree acknowledging receipt of notice of meeting, and stating that he would be unable to be present, which communication was ordered filed. The written resignation of Chas. Knapp as vice-president and assistant secretary, Thos. L. Zimmerman, Jr., as vice-president and assistant secretary, L. W. Chandler, as assistant secretary, and [232] Geo. L. Eastman as assistant secretary were presented and ordered filed with the record of the company. It was then moved by Director Howard, seconded by Director Smith and unanimously carried that the resignation of each of the above-named officers as presented by said officers be and the same are hereby accepted, and it was further moved, seconded and unanimously adopted that each of said officers be notified at once of the acceptance of their resignations. There being no further business meeting on motion adjourned.

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Secretary *pro tem.*

**[Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated May 20, 1911.]**

Special Meeting of Directors—May 20, 1911.

A special meeting of the Directors of the Tenabo

Mining & Smelting Co., was held in the office of Stephens, Smith & Porter, 601 Judge Building, Salt Lake City, Utah, at 11:3 A. M. on Wednesday, May 20th, 1911, pursuant to call regularly made, the following directors being present: Messrs. W. Mont. Ferry E. O. Howard, Benner X. Smith and John Janney, being the directors elected at the meeting of stockholders held on May 13th, 1911, and each of whom subscribed to the oath of office prescribed by law and then proceeded to the election of officers. The following officers were elected by ballot: W. Mont. Ferry, President, Benner X. Smith, Vice-president, John Janney, secretary, and E. O. Howard, Treasurer.

Report from Mr. Locker as to the progress of his work in Paris, France, was read by the secretary, whereupon it was moved, seconded and adopted that the contract heretofore entered into between this company and Mr. Locker, as appearing of record in the minutes of meeting held on the 5th day of March, 1910, and as modified at subsequent meeting, as appearing of record in the minutes of said meeting be extended so that the same will not expire by limitation of time until ninety days following the date of this meeting. The vote being as follows: Ayes, Messrs. Ferry, Smith and Howard. Mr. Janney not voting, being excused.

The following motion was made by Mr. Howard and seconded by Mr. Smith and unanimously carried.

Whereas, this company has been receiving information as to the progress of his work from Mr.

P. B. Locker at irregular though satisfactory intervals of time, and

Whereas, it is deemed advisable that Mr. Locker report more formally to this company, therefore be it

Resolved, that the president of the company request Mr. Locker to make a stated report on or about the first of each and every month as to the progress of his work up to that time.

There being no further business meeting on motion adjourned.

(Signed) JOHN JANNEY,  
Secretary. [233]

**[Defendant's Exhibit "L"—Minutes of Meeting of Directors of Tenabo M. & S. Co., Dated June 12, 1911.]**

Special Meeting of Directors—June 12, 1911.

The Board of Directors of the Tenabo Mining & Smelting Company met at its principal place of business in Salt Lake City, Utah, on the 12th day of June, 1911. There were present the following directors: W. Mont. Ferry, E. O. Howard, John Janney and Benner X. Smith. Mr. Skeen having failed to qualify.

Whereupon the following resolutions was offered by director Smith who moved its adoption:

Whereas, the Board of Directors has been advised that certain stockholders of this company have commenced an action in the United States Circuit Court for the District of Nevada against this company claiming that in the organization of the company there were certain fraudulent acts and practices, and

also making other claims of which this Board is not fully advised for the reason that a copy of the pleadings has not been served upon this Board, and after diligent effort the Board has not been able up to this to obtain a copy of the same.

Whereas, the object of said action is to have a Receiver appointed for the company, which, if successful, will *probably winding* up of the company and the sale of its property, and

Whereas, under such circumstances and until said action is determined, it is the opinion of this Board that the treasury stock which Mr. Locker is now attempting to sell should not be sold now, therefore be it

Resolved, that pending the determination of said action and until further action of this Board there be no treasury stock or other stock of this company sold and that a certified copy of this resolution be forwarded at once to Mr. P. B. Locker.

Said resolution was then discussed by the Board and put to a vote and adopted unanimously. Whereupon the following resolution was offered by director who moved its adoption :

Whereas, there has come to the notice of the Board of Directors of this company a prospectus mailed at Paris on May 27, 1911, and received at *the* Salt Lake City on the afternoon of June 9, 1911, issued under the name of the Bank Charaire & Company of Paris, France, soliciting the purchase of the French bearer certificates of this company, and

Whereas, said prospectus so issued contains statements which are not founded upon fact, and mis-

representations as to the property of the company and the value of the same, and

Whereas, this company and its Board of Directors do not approve of said prospectus and the statements made therein, and disapprove of said representations and the use of said prospectus for the purpose of the sale of the said bearer certificates of this company, now therefore be it,

Resolved, that the Board of Directors disapprove of the issuance of said prospectus and of the various false statements and misrepresentations contained in the same, and that this Board should not allow any of its treasury stock or bearer certificates to be sold under such representations or any false representations, and that the action of the secretary of the company in sending the following cablegrams be and is hereby approved:

June 1, 1911.

Tenaboms,  
Paris.

Defer issuing prospectus until corrected. Will be compelled to refund to buyers if we do not notify them.

(Signed) TENABOMS.

June 19, 1911.

Tenaboms,  
Paris.

Speedy action is absolutely necessary by stopping stock sales owing to false representations. In order to put a stop to sales orders must be [234] telegraphed in plain language to banks. Telegraph what action has been taken concerning.

June 11, 1911.

Frambank,  
Paris.

We do not approve prospectus Chaireire & Co. Should follow engineers' reports. Must not dispose of the stock. Refuse to accept money.

Said motion was then discussed and unanimously adopted. On motion it was ordered that a copy of the foregoing resolution be sent to the Franco-Americane Banque and also to P. B. Locker. There being no further business meeting on motion adjourned.

(Signed) JOHN JANNEY,  
Secretary.

**[Complainant's Exhibit No. 3—Resolution of Directors of Tenabo M. & S. Co.]**

Exhibit 3, J. W. C., Examiner.

Whereas, large sums of money are being expended by P. B. Locker in the work of financing the treasury of this company by the sale of treasury stock in Paris, France, \$4368.57 being the Windsor Trust Company bill for printing French bearer certificates, of which \$2,000.00 has been paid; \$1,310.00, \$610.00, \$410.00 bills for services of vice-presidents and assistant secretaries in signing 45,000 certificates; French taxes due approximating \$10,000.00. Trustee fee to Windsor Trust Company, \$3,000.00; also attorney's fees for legal advice in Paris, and sundry other incidental expenses; and

Whereas, this company is not paying any part of these expenses but is receiving the benefit therefrom and is therefore interested in the success of negotia-

tions which require expenditures of large sums of money on the part of the said P. B. Locker; and

Whereas, said Locker has advised this company that he can secure a loan from a French bank upon his note, provided he can secure the issue of 50,000 shares in French bearer certificates, and has asked for a loan of the same, offering to secure this company by 70,000 shares of stock of this company which is owned by him and associates;

Now, therefore, be it resolved that this company loan to the said P. B. Locker, 50,000 shares in French bearer certificates for a period of six months, upon the deposit by the said P. B. Locker with the Windsor Trust Company, to the credit of the Tenabo Mining & Smelting Company, as collateral security of 70,000 shares of stock of this, the Tenabo Mining and Smelting Company, upon the condition that the consent to the loan of said 50,000 [235] shares in French bearer certificates be obtained from Mr. Bernard Desouches, 148 Avenue Malakoff, Paris, France, and also from the members of the Underwriting Syndicate, with whom this company has contracts relating to the said stock; and

Resolved, that this company authorize the payment of \$25,000.00 to the order of P. B. Locker from the money deposited in the Franco-Americane Banque to the credit of this company, from the sale of the first allotment of 150,000 shares of stock, not, however, until the entire allotment of 150,000 shares aforesaid, has been paid for in full, and upon condition that the said P. B. Locker deposit with the said Franco-Americane Banque, 50,000 shares of stock of this

company as requested by five thousand French bearer certificates of the denomination of ten shares each, heretofore loaned to the said P. B. Locker by Tenabo Mining and Smelting Company, for the purpose of providing funds for expenses and so forth;

Resolved, that the Franco-Americane Banque be and the same is hereby, authorized and instructed to turn over to the order of P. B. Locker, of the Hotel Chatman, Paris, France, and Mr. Bernard Desouches, party of the second part in a contract authorized by resolution adopted March 5th, 1910, five thousand French bearer certificates of the denomination of ten shares each, upon the deposit of the said P. B. Locker with the Franco-Americane Bank, or with the Windsor Trust Company of New York, or part with one and part with the other, a total number of shares which will aggregate 70,000 said shares to be deposited to the order of the Tenabo Mining and Smelting Company.

**[Complainant's Exhibit No. 5—List of Stockholders  
of the Tenabo M. & S. Co., etc.]**

Exhibit 5, JWC., Examiner.

List of Stockholders of the Tenabo Mining & Smelting Company, as of the Close of Business, Jan. 12th, 1912.

Name	Address.	No. Shs.
Adams, W. F.,		4000
Adams, E. M.,		40
Adsit, L. M.,		800
Adsit, Charles,		2000
Allen, Sam. H.,		400

400 *Tenabo Mining and Smelting Company*

Name	Address.	No. Shs.
Allgeri, Anthony, [236]		9800
Ball Brothers,		250
Bannister, Thomas,		200
Barker, A. G.,		280
Bates, C. D.,		200
Benson, W. T.,		600
Bloom, William, 62 Summer St., Boston, Mass.,		98200
Brien, H. M.,		500
Browning, Mrs. Alice,		800
Bowman, D. A.,		40
Burke, C. S. T.,		500
Campbell, J. E., c/o H. Tyree, 49 Wall St., N. Y. City,		100
Case, W. A. Logan,		50
Case, Dana Eva,		50
Case, W. A.,		600
Cassidy, John J.,		10000
Childs, H. L.,		40
Clark, W. Campbell, 260 Ogden St., New- ark, N. J.,		2000
Clarke, John T., c/o H. Tyree, 49 Wall St., N. Y. City,		100
Clark, C. C.,		200
Conely, R. L., c/o McCornick & Co., Bank- ers, Salt Lake City, Utah,		500
Cook, Charles H.,		400
Cronce, George,		1600
Cross, F. B.,		200
Critss, A. B.,		200

Name	Address.	No. Shs.
Davis, Emanuel,		200
Davis, Fred C.,		140
Deetrich, Albert,		1000
Donovan, J. J.,		400
Dunn, Blanche L.,		40
Dunton, C. B.,		200
Edwards, H. C.,		4000
Ellerbeck, W. L.,		300
Englehardt, O. A. & M. L.,		400
Falk, Catherine L.,		400
Faust, William H.,		300
Fendall, Thomas M.,		10000
Fendall, Thomas M.,		1000
Fetherolf, N. J.,		160
Fowler, George W., c/o H. Tyree, 49 Wall St., N. Y. City,		89000
Fetherolf, James M.,		240
Fox, J. C.,		400
Gardanier, E. E.,		200
Gem Consolidated Mining Co.,		50000
Grigg, Alfred,		200000
Crimsdell, W. G.,		200
Hallowell, James,		200
Harris, Winthrop & Co., 25 Pine St., N. Y. City,		500
Harrison, Harry,		500
Herbert, Arthur,		500
Hinks, Edwin S.,		1300
Hobbs, P. L.,		5000
Honsman, Frank,		200
Grandy, Sophia,		200

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Name	Address.	No. Shs.
Howard, E. A.,	60 Judge Bldg., Salt Lake City, Utah,	100
Humphrey, L.,		2000
Janney, John,	60 Judge Bldg., Salt Lake City, Utah,	100
Jannay, John,		55618
Janney, A. D. P.,		750
Jensen, F. C.,		4000
Johns, Arthur,	60 Wall St., N. Y. City,	44490
[237]		
Jones, Arthur,		40
Kaufman, Edward,		40
Kantor, S. B.,		1000
Kimball, F. D.,	c/o McCornick & Co., Salt Lake City, Utah,	1000
Kinkhorst, Dora E.,		160
Kinkhorst, Adele W.,		160
Klein, Louis,		400
King, N. H.,	c/o H. Tyree, 49 Wall St., N. Y. City,	100
Kelly, P. H.,	c/o H. Tyree, 49 Wall St., N. Y. City,	100
Kelly, Chas. E.,	c/o H. Tyree, 49 Wall St., N. Y. City,	100
Kells, A. R.,		120
Kells, George F.,		200
Kosick, Frank,		200
Kyes, M. W.,		220
La Barge, Sam.,		120
Larsen, O. J.,		400
Le Pelley, Frank,	c/o First National Bank of Chicago, Chicago, Ill.,	100

Name	Address.	No. Shs.
Lee, Miss Mary,		10
Lee, Tatum R. E.,		40
Lerwill, Joe,		400
Lindsay, Mary,		400
Locker & Janney,		2040
Locker, P. B.,		47618
Locker, P. B., Trustee,		14000
Lutz, Samuel,		500
Lynn, R. H.,		1000
McMickael, N. J.,		1000
Machader, Chas. M.,		40
Marsh, W. H.,		1000
Martin, J. R.,		40
Martin, W. C.,		160
Massy, W. A., c/o H. Tyree, 49 Wall St., N. Y. City,		100
Michel, C. E.,		200
Mitchell, Mattie,		1000
Mont, Ferry W., c/o Stevens, Trust & Por- ter,		100
Moore, B. Walton,		1000
Morgan, Cora,		400
Morris, Henry D.,		500
Mull, Charles H.,		250
Murphy, Robert,		64800
Myton, H. P.,		3360
Mettenstrom, Jno. R., c/o First National Bank, Chicago, Ill.,		200
Nitchke, Fred,		80
O'Neill, A. B.,		100
Olson, George,		400

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Name	Address.	No. Shs.
Pacham, J. M.,		1000
Paige, H. Ray, 1122 William St., Hoboken, N. J.,		50
Paxtin, Mrs. R. A.,		1000
Pezoldt, G.,		280
Phelps, Raymond R., c/o First Natl. Bank, Chicago, Ill.,		550
Pingree, John, 60 Judge Bldg., Salt Lake City, Utah,		100
Porato, Anton,		400
Powers, O. W., c/o H. Tyree, 49 Wall St., N. Y. City,		100
Price, C. S., Boston Bldg., Salt Lake City, Utah,		100
Printz, Michael,		200
Raleigh, A. E.,		20000
Reed, F. W.,		80
Weinkling, L. H., c/o First National Bank, Chicago, Ill.,		300
Robertson, Nellie B.,		2000
Rockwell, D. L.,		500
Root, Mrs. Clara R.,		2000
Rust, George,		2800
Saacke, Chas. W., 74 B'way, N. Y. City,		1000
[238]		
Schultz, R. W.,		4000
Schultz, H. P.,		1000
Schweitzer, Louis,		5000
Sharkey, B. A., 602 W. 116th St., N. Y. City		500
Shoenberg, L. D.,		2000

Name	Address.	No. Shs.
Shepard, Angelina,		750
Shobe, R. C.,		40
Simon, Milton,		1000
Skillern, John, Jr.,		500
Smith, Benner X.,	60 Judge Bldg., Salt Lake City, Utah,	100
Spaeth, Otto, c/o H. Tyree,	49 Wall St., N. Y. City,	87000
Spalding, J. P., c/o McCornick Bros. & Co.,	Salt Lake City, Utah,	500
Stauffenberg, W. C.,		200
Sullivan, T. J.,		200
Tanner, Mrs. Anna,		2000
Thal, Gus,		200
Trauer, H. R., Trustee,		8000
Tyree, H.,	49 Wall St., N. Y. City,	1000
Tyree, John C., c/o H. Tyree,		300
Ulman, Setha A.,	50 Congress St., Boston, Mass.,	1000
Waggoner, George J.,		1000
Walker, M. H., Trustee,		7604
Walker, M. H.,		4000
Wardell, Edward H.,	Bowling Green, N. Y. City,	300
Warmington, D. R.		1000
Wille, Mrs. Fae		800
Willson, Chas. C., c/o Continental & Com- mercial Tr. & Savings Bank, Chicago,	Ill.,	500
Wilson, R. C.,	Chicago, Ill.,	500

Name.	Address.	No. Shs.
Windsor Tr. Co.,	Trustee, 59 Cedar St.,	
	N. Y. City,	450000
Wires, Albert, Jr.,		80
Wishan, Ralph,		280
Wood, J. D.,		4000
		<hr/>
		1,367,200

List of Stockholders Jany. 12, 1912. Tenabo Mining & Smelting Co., John Janney, Secy. (Seal of Company.) [239]

[**Complainant's Exhibit No. 6—Agreement, Dated January 4, 1910, Windsor Trust Co. and Tenabo M. & S. Co.]**

TENABO MINING AND SMELTING COMPANY.

STOCK TRUST AGREEMENT.

Exhibit 6

J. W. C. Examiner.

WINDSOR TRUST COMPANY, Trustee.

THIS AGREEMENT, entered into the 4th day of January, 1910, by and between the WINDSOR TRUST COMPANY, of the City of New York, hereinafter called the Trustee, party of the first part; the TENABO MINING AND SMELTING COMPANY, a corporation organized under the laws of the State of Nevada, hereinafter called the Company, party of the second part, \_\_\_\_\_, as co-partners, composing the banking firm of \_\_\_\_\_, hereinafter called the Bankers, parties of the third part, and the several holders of all stock trust certificates, issued and to be issued hereunder, in accord-

ance with the terms hereof, parties of the fourth part, WITNESSETH:

WHEREAS, the Company is a corporation organized under the laws of the State of Nevada, having an authorized paid-up capital stock of Three Million Dollars (\$3,000,000), consisting of Fifteen Hundred Thousand (1,500,000) shares of stock of the par value of Two Dollars (\$2.00) each, of which said capital stock there remain in the treasury ——— shares; and

WHEREAS, the Company is desirous of selling its treasury stock for the purpose of providing funds for the further developing its mining properties and erecting reduction plants for the more economical handling of its ores; and

WHEREAS, the Bankers, after satisfactory investigation of the company and its affairs, are desirous of lending their assistance, and to sell for the company a part of this capital stock remaining in the treasury; and

WHEREAS, the Bankers have represented to the Company that the French public is accustomed to certificates of capital stock in the form of certificates issued to bearer instead of certificates registered in the names of the stockholders of record such as are universally issued in [240] the United States, and for that reason have proposed to the Company a plan for the issuance by the Trustee of bearer certificates representing the beneficial interest in shares of the capital stock of the Company deposited with the Trustee, and

WHEREAS, the Company desires to deposit with

the Trustee the certificates representing said shares with transfer thereof in negotiable form and to procure the issue against the same of Stock Trust Certificates as hereinafter provided, and to make provision for the future deposit with the Trustee of other certificates representing additional shares of said stock to be held and disposed of by the Trustee in the manner and for the purposes hereinafter set forth, and against which Stock Trust Certificates shall be issued as aforesaid, and to make provision concerning the right to vote on said stock while on deposit with the Trustee,

NOW, THEREFORE, in consideration of the premises and of the several agreements hereinafter set forth, it is herein agreed as follows:

FIRST: The Company will upon the execution and delivery of this agreement deposit with the trustee for the purposes and on the conditions, herein specified, certificates for not less than Four Hundred and Fifty Thousand (450,000) shares of its capital stock with transfers endorsed thereon or annexed thereto, to said Trustee or its assigns, and upon such deposit the Trustee will in exchange therefor issue and deliver pursuant to the order of the Board of Directors of the Company Stock Trust Certificates with dividend coupons annexed thereto for a number of shares equal to the number of shares represented by the certificates of stock deposited with it as aforesaid, which Stock Trust Certificates and dividend coupons shall be in substantially the following form:

TRUSTEE'S CERTIFICATE.

for

Number                      ——— shares                      SHARES

CAPITAL STOCK OF

TENABO MINING AND SMELTING COM-  
PANY.

Capital Stock \$3,000,000.

Incorporated under the laws of the

Par Value shares \$2 each.

State of Nevada, U. S. A. [241]

Full paid and non-assessable.

Trust Certificate to Bearer:

The bearer hereof, upon surrender of this trust certificate and all unpaid dividends coupons (issued on account thereof) is entitled to a certificate for ——— shares of Two Dollars (\$2) each of the Capital Stock of the Tenabo Mining & Smelting Company, the same having been deposited with this Company in trust for the bearer hereof in accordance with the terms of an agreement dated the ——— day of January, 1910, reference thereto being made hereby for a statement of the respective rights and liabilities of the Copper Company, the Trustee and the holder thereof.

On receipt of such dividends declared thereon (from time to time) by the Tenabo

Mining & Smelting Company,  
 the undersigned will, either  
 directly or through Messrs.  
 ————— or their successors,  
 (Paris, France), pay to bear-  
 er, according to notice pub-  
 lished by it, the equivalent of  
 such dividends upon presenta-  
 tion and surrender of the  
 coupons hereto annexed, cor-  
 responding in number to the  
 dividends declared after de-  
 ducting therefrom an amount  
 equivalent to the transmission  
 and income taxes in France.

New York, ————— 190—

WINDSOR TRUST COMPANY,

By \_\_\_\_\_,

Secretary. [242]

(Form of Dividend Coupon.)

On receipt by it from the  
 Tenabo Mining & Smelting  
 Company of Dividend No. —  
 this Company will pay, ac-  
 cording to notice published by  
 it, to the bearer of the coupon  
 corresponding thereto, either  
 directly or through Messrs.  
 —————, or their successors,  
 in Paris, France, the equiva-  
 lent of such dividend on —  
 shares of Capital Stock held

by this Company in trust for the bearer of and in accordance with its Trust Certificate No. —, after the deduction of amount equivalent to the transmission and income taxes in France.

WINDSOR TRUST COMPANY,

By \_\_\_\_\_,

Treasurer.

The Company agrees to execute upon the stock trust certificates to be issued for the share or shares represented by the corresponding certificates of stock so deposited under this agreement with the Trustee, a certificate in substantially the following form, to wit:

1. The Tenabo Mining and Smelting Company hereby certifies that full paid and non-assessable registered certificates equivalent in amount to all bearer certificates of the Windsor Trust Company outstanding, have been deposited with the said Windsor Trust Company for the holder of such bearer certificate.

2. That the said Trust Company has agreed with the undersigned Company that, at his option, the holder of the within bearer trust cer-

tificate may exchange the same, having attached thereto all dividends, coupons, in respect whereof liability shall not have accrued, for a registered share certificate of like amount. An agency will be established in Paris, where application for such changes may be filed and the same [243] will be effected within a reasonable time on the date of filing the requisition and upon the payment of a fee of twenty cents (20¢) for each certificate so exchanged.

TENABO MINING AND SMELTING  
COMPANY.

\_\_\_\_\_,  
President.

\_\_\_\_\_  
Secretary.

Memorandum:

After payment of the last coupon on Trust Certificate No. — for — shares of the Capital Stock of the Tenabo Mining and Smelting Company, a new coupon sheet, will be delivered to bearer on surrender of the last coupon and of this memorandum.

SECOND: The Trustee agrees further that at any time during the continuance of the Trust under

this agreement it will receive from the Company any additional certificates of stock of the Company standing in the name of it as Trustee or in any other name satisfactory to it, provided it shall be in negotiable form for transfer of it, as such Trustee and after such transfer will hold the same subject to this agreement, and in exchange therefor will issue stock trust certificates in the form aforesaid for the number of shares represented by the said certificates of stock so deposited with it.

The Trustee agrees further that when all the dividend coupons annexed to any stock trust certificate issued by it hereunder shall have become due and proper provision shall have been made for the payment thereof, it will, upon presentation to it of the memorandum or "talon" attached to such stock trust certificate, together with such stock trust certificate itself, attach to said stock trust certificate a new coupon sheet which the Company agrees to provide for the payment of further dividends when declared by the Company upon such stock in the same form as above set forth.

Whenever a mutilated stock trust certificate issued hereunder shall be surrendered to the Trustee, the Trustee in exchange therefor upon request of such holder, and on payment of the sum of fifty cents [244] for each new stock trust certificate, will issue a new stock trust certificate, with coupons for unpaid dividends, the agreements herein on the part of the Trustee and the Company with respect to the execution and delivery of stock trust certificates being hereby made to apply to such case.

THIRD: In case the officers of the Trustee or of the Company who shall have signed and sealed any of said stock trust certificates or the agreement of the Company thereon endorsed shall cease to be such officers of the Trustee or of the Company respectively before the said stock trust certificates so signed and sealed shall be actually delivered by the Trustee, such certificates nevertheless may be issued, authenticated and delivered as though the persons who signed and sealed the same had not ceased to be officers of the Trustee or of the Company.

The coupons to be attached to such stock trust certificates shall be authenticated by the engraved signature of the Treasurer or any future Treasurer of the Trustee and the Trustee may adopt and use for that purpose the engraved signature of any person who shall have been such Treasurer, notwithstanding the fact that he may have ceased to be such Treasurer at the time when such stock trust certificates shall be actually delivered.

The certificate inscribed by the Company on the Trustee's certificate shall be authenticated by the engraved signature of the President and Secretary of the Company or any future Secretary and President of the Company, and the Company may adopt and use for that purpose the engraved signature of any persons who shall have been either Secretary or President of the Company, notwithstanding the fact that they may have ceased to be such Secretary or President at the time when such stock trust certificates shall have been actually delivered.

Before delivering any stock trust certificates, all

coupons thereon representing dividends which have already been paid by the Company shall be cut off and canceled by the Trustee.

The aggregate of the stock trust certificates issued and outstanding hereunder shall at no time represent more than the aggregate number of shares represented by the certificates of stock deposited with [245] and then held by the Trustee hereunder.

The Trustee or the Bankers may deem and treat the bearer of any stock trust certificate or any coupon thereunto belonging as the absolute owner of such certificate or coupon for the purpose of receiving payment thereof and for all other purposes whatsoever, and neither the Trustee nor the Bankers shall be affected by any notice to the contrary, but nothing herein or in said stock trust certificate shall prevent said Trustee from requiring proof of such ownership.

FOURTH: The Trustee hereby agrees, subject to the provisions of Article Fifth, that on and prior to the — day of ———, 19—, upon surrender to it for such purpose of any stock trust certificate, with all coupons attached thereto belonging, representing undeclared dividends issued on account thereof and payment by the holder of Twenty Cents (20¢) for each certificate so presented, it will deliver to the individual, surrendering said stock trust certificate out of the certificates of stock deposited under this agreement, certificates of stock for the number of shares of stock of said Company of the par value of Two Dollars (\$2.00) each, named in the stock trust certificate thus surrendered. The right to proof of ownership may be reserved to the Trustee

in its discretion as aforesaid. All stock trust certificates so surrendered shall be cancelled by the Trustee and by the Company.

Until the actual transfer of certificates for shares in exchange for and upon surrender of stock trust certificates issued hereunder, the Bankers shall possess and shall be entitled to their discretion to exercise, in respect of any and all shares deposited hereunder, all rights including the right to vote thereon for every purpose, and to assent to any corporate act of said Company, as though they were the absolute owners of said shares. It being expressly stipulated that no voting right passes to others by or under any of said stock trust certificates or by or under this agreement; and upon request of the Bankers, from time to time, the Trustee shall execute or shall cause to be executed and delivered to them or to their nominee or nominees, unrestricted proxies entitling or authorizing the Bankers or their nominee or nominees to vote upon said stock as aforesaid. [246]

FIFTH: If a dividend upon any of the stock represented by any stock trust certificate issued and outstanding under this agreement shall not be called for within six years after the same shall have been paid to the Trustee, such dividend shall be returned by the Trustee to the Company, which thenceforth shall hold the same free and discharged of any legal claim in respect thereof. Provided, however, that the Trustee may cause advertisement of at least twice in each week for four successive weeks to be made in a daily paper published in New York, and also in a paper published in Paris, France, before being re-

quired to return any such dividends.

Except with the consent of the Company, no holder of any such stock trust certificate outstanding after the expiration of the French "abonnement" license thereof, shall be entitled to derive or to receive any dividend or other benefit in respect of any stock represented by such stock trust certificate then outstanding but not presented for redemption under this agreement; and the holder of every such stock trust certificate surrenders and transfers to the Company his rights as above indicated, from and after the expiration of such terms of six years, and twenty years, severally and respectively.

SIXTH: The Bankers are hereby appointed agents for the following purposes, to wit:

(a) To notify the proper authorities of the Paris Stock Exchange of the dates of payment of the coupons annexed to the outstanding stock trust certificates, as also of the gross and net amounts of the dividends to be paid upon each share represented by the stock Trust Certificates upon surrender of the coupons representing same, and this notification shall be full publication as required in said certificates.

(b) To notify the holders of such stock trust certificates of the dates of payment of the coupons annexed thereto, in their order, as provided in said stock trust certificates.

The Trustee shall not be responsible for the acts or omissions of such agents who are hereby accepted as such agents by all certificate holders and by the Company. [247]

The Banker hereby accepts such appointment and agrees duly to furnish the notices provided for by this article.

The Trustee will receive such sums as may be paid to it as dividends upon all shares of stock of the Company deposited with it hereunder and standing in its name, from time to time, and thereupon it will promptly distribute the same *pro rata* to and among the holders of stock trust certificates issued hereunder, as provided in said stock trust certificates and the coupons thereto annexed, upon presentation and surrender of the proper dividend coupons thereto annexed, but only after deduction of the French transmission and income taxes with respect to each share of stock as against which such coupons are issued and presented, and upon said Trustee receiving proof that all transmission and income taxes in France with respect to all stock deposited hereunder and subject to "abonnement" in France have been paid for the quarter approximately next preceding the date of payment of such dividend. Original or duplicate original receipts from the French Government showing such payment shall be sufficient proof for the protection of the Trustee against any and all persons.

After the receipt by it of the joint written request provided for by Article Ninth hereof the Trustee shall not be required to distribute dividends except as provided in said Article. In the event that the Bankers should fail to perform any obligation by them assumed in this agreement, or in any other agreement between them and the Company, then the

Company may by resolution of its Board of Directors, appoint other Bankers in Paris, France, as their successors and upon acceptance by the successor Bankers of the appointment said successor shall become vested with all the rights, duties and obligations of their predecessors under this agreement.

SEVENTH: The Trustee, however, agrees that in case at the time of the receipt by it of any dividends upon the stock of the Company standing in its name as Trustee, it shall hold shares in respect of which no stock trust certificates shall have issued, it will repay to the Company so much of such dividends as represent dividends declared upon any such shares. [248]

EIGHTH: The Company or the Trustee may terminate this agreement as to the Trustee on sixty days' notice to that effect to be given by either to the other, as the case may be, and to the Bankers. In case at any time a vacancy shall thus be created in the office of Trustee, a successor Trust Company may be named as Trustee by the joint written appointment of the Bankers and the Company, which appointment shall be filed with the successor Trust Company and upon the acceptance of such appointment by the successor Trust Company it shall be clothed with all the powers given the Trustee hereunder, and upon the trusts of this agreement. Any new trustee appointed hereunder shall execute, acknowledge and deliver to the Trustee an instrument accepting such appointment hereunder, and the trust by this agreement created, and thereupon such new Trustee shall without any further act or deed become

vested with all rights, powers and trusts of its predecessors in the trust hereunder with like effect as if originally appointed.

NINTH: As a condition precedent to the acceptance of the Trust by the Trustee, it is further stipulated and agreed by and between the parties hereto and all present or future holders of the stock trust certificates issued and to be issued hereunder, as follows:

The recitals contained herein, and in the stock certificates or in the stock trust certificates as to due authorization or issue or any other matter whatsoever, are made by and on the part of the Company, and the Trustee assumes no responsibility for the correctness of the same.

The Trust Company shall be under no obligation to see to any record, registry or filing of this indenture which may be necessary or desirable, and shall receive from the Company reasonable compensation to be agreed upon between it and the Company for all services rendered by it in the execution of the trusts hereby created.

The Trust Company shall not be responsible in any manner whatsoever for the recitals herein contained, nor for any statement of fact herein made, nor for the acts of the Bankers or their successors, nor shall it be responsible for the validity of any stock received by it [249] hereunder, nor liable in the event that such stock, or any part thereof, be not fully paid and non-assessable, nor in any event shall the Trustee be individually liable as a stockholder or as the owner of any stock deposited hereunder, its

interest therein being merely that of Trustee. In no event shall the Trustee, notwithstanding anything otherwise contained herein, be personally responsible or liable for any tax or government charge of any kind with respect to any transaction whatsoever hereunder. The Trustee shall be fully protected in relying upon any information or advice from the Bankers respecting such taxes or governmental charges and the Bankers shall be solely responsible therefor to certificate holders and others.

The Trustee shall not be responsible for the genuineness of any of the signatures which may be endorsed upon the stock trust certificates or any agreement annexed thereto or endorsed thereon, nor for the authority of the officers purporting to execute such agreements, save only those of its own officers. It shall be under no liability for accepting or acting under any paper received by it purporting to be duly executed and believed by it to be genuine.

The Trustee may advise with legal counsel, and any action under this indenture taken or suffered in good faith by the Trustee in accordance with the opinion of counsel shall be conclusive on the Company, the Bankers and on the holders of all stock trust certificates, and the Trustee shall be fully protected in respect thereto.

The Trustee shall be protected in acting upon any resolution, notice, request, consent, certificate, affidavit, voucher or other paper or document believed by it to be genuine, and to have been passed or signed by the proper party.

All questions concerning the terms, provisions and

effect of this agreement and of the certificates issued hereunder and the rights of the holders thereof, shall be exclusively construed and determined according to law in the United States of America and be adjudicated by the proper tribunals thereof, and while each of said certificates and of the dividend coupons are in both the English and French languages, [250] the English forms shall prevail in construction.

TENTH: The Trustee shall deliver stock trust certificates hereunder in conformity with written instructions to be given it by the Company in a resolution of its Board of Directors and shall pay all dividends to holders of such certificates directly at its office in New York or through the Bankers in France.

ELEVENTH: This agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the corporations parties hereto have respectively caused these presents to be executed in triplicate original by their proper officers and their corporate seals to be hereunto affixed, and the Bankers have subscribed their names hereto, and the parties of the fourth part have expressed their assent thereto by accepting such stock trust certificates issued hereunder in manner and form as above provided, the day and year aforesaid.

WINDSOR TRUST COMPANY,

By \_\_\_\_\_.

THE TENABO MINING & SMELTING  
COMPANY,

By \_\_\_\_\_ [251]

State of New York,  
County of New York,—ss.

On the — day of —, in the year one thousand nine hundred and ten, before me personally came —, to me known, who, being by me duly sworn, did depose and say that he resided in —; that he is the — of the WINDSOR TRUST COMPANY, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

State of —,  
County of —,—ss.

On the — day of —, in the year one thousand nine hundred and ten, before me personally came —, to me known, who, being by me duly sworn, did depose and say that he resided in —; that he is the — of the TENABO MINING AND SMELTING COMPANY, the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order. [252]

**[Complainant's Exhibit No. 8—Statement of Account of Tenabo M. & S. Co. with Utah National Bank of Salt Lake City].**

EXHIBIT 8.

THE UTAH NATIONAL BANK OF SALT LAKE CITY.

Sheet No. 1.

Account No.

Date.	No.	Item.	Checks.	Deposits.	Totals.	Balance.
Name—Tenabo Mining & Smelting Co. Address—105 Mer. Block.						
1909.						
Ap. 20.				1425		1425.
21.			1140.			285.
May 10.		Ck. Book	1.50			283.50
11.				262.50		546.
14.	2		210.			336.
28.	4		81.09			254.91
June 25.	3		70.23			
	5		1.			183.68
July 7.	6		15.55			168.13
Sept. 16.	7		3.75			164.38
27.		Tel. to E. S. Mendels.	.75			163.63
Oct. 25.	8		6.65			156.98
30.			1.76			155.22
Nov. 20.				24551.40		24706.62
22.		Tel.	1.05			24705.57
30.	10		18860.			
	13		550.			5295.57
Dec. 1.	15		550.			
12.			700.			
17.			107.50			
9.			160.30			
14.			550.			3227.77
2.	11		1025.45			2202.32
4.	18		200.			2002.32
9.	19		80.			1922.32
10.	16		81.15			1841.17

EXHIBIT 8.

THE UTAH NATIONAL BANK OF SALT LAKE CITY.

Sheet No. 1.

Account No.

Name—Tenabo Mining & Smelting Co.

Address—105 Mer. Block.

Date.	No.	Item.	Checks.	Deposits.	Totals.	Balance.
13.		Tel.	.72			1840.45
17.		Tel.	.55			1839.90
20.	20		319.			1520.90
20.	21		481.			1039.90
29.			.96			1038.94
30.	23		50.			988.94
1910.						
Jan.	3.		1.75			987.19
	4.	22	50.			937.19
	10.	24	1.55			935.64
	13.	25	75.			860.64
	17.		1.50			859.14
Feb.	1.	29	50.			809.14
	3.	30	50.			759.14
	4.	27	1.			
		28	38.45			719.69
		2/8 Statement.				
	5.	31	2.45			717.24
	9.	33	2.			715.24
		Telegram	.75			714.49
	21.	38	256.			458.49
	23.	36	2.75			
		37	144.			311.74
Mar.	5.	34	25.			286.74
	"	35	1.75			284.99
	12.	32	110.			174.99
	16.		1000.			1174.99
	24.	43	550.			624.99
	25.	45	50.			574.99
	30.	44	50.			524.99
	31.	40	6.			
		50	15.20			503.79
	"	41	3.50			

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## EXHIBIT 8.

### THE UTAH NATIONAL BANK OF SALT LAKE CITY.

Sheet No. 1.

Account No.

Name—Tenabo Mining & Smelting Co.

Address—105 Mer. Block.

Date.	No.	Item.	Checks.	Deposits.	Totals.	Balance.
	51		150.			
	48		50.			300.29
Apr. 1.	47		50.			250.29
4.	46		50.			200.29
May 26.	52		50.			150.29
31.	53		5.			145.29
Jun. 6.	55		3.			142.29
8.	54		8.10			134.19
21.	56		14.06			120.13
30.	57		10.			110.13
10/11.	58		20.50			89.63
11/15.			4.45			85.18
12/5.			28.50			56.68
1911.		Statement 1/5/11.				
1/5.			12.			44.68
Jan. 9.	1911		.75			43.93
2/10.			14.			29.93
13.			1.			28.93
14.			10.34			18.59
20.			2.60			15.99
21.			1.85			14.14
26.			4.07			10.07
		Statement May 8-1911.				
May 11-1911.			7.25			2.82
20.			10.		(In red)	7.18
22.						
					7.18	Closed.

**Complainant's Exhibit No. 13 [Letter Dated November 29, 1910, P. B. Locker to John Janney].**

“9, rue Pillet Will, Paris,

November 29, 1910.

John Janney, Esq.,

105 Mercantile Block,

Salt Lake City, Utah.

Dear Janney:—

I have been very busy getting an office for the Company, holding a meeting of the Underwriters to elect the Managing Committee for the Syndicate, which together with the other work that I have had to do has kept me from writing for a few days.

I will have the attorney, Mr. Picard, write you a letter explaining the present situation here, and I will have the Manager of the Banque-Franco-Americaine write you a letter, telling you who the Underwriters are and I will try to give you a full and complete idea of the present situation.

I am just in receipt of a letter from Mr. Beardsley of the Windsor Trust Company, copy of which I enclose herewith, which shows that we have no certificates yet, but are likely to get them in a few days. You can readily appreciate what difficulties I have had to contend with in keeping the people in line who expected the certificates in the early part of October and now we shall only get them in December.

This delay has necessitated my extending the option and the time of payment of the Underwriters until February 15th. This is within the limits of my contract, and I do not suppose that it is necessary to

have a special resolution of the Board of Directors in this matter. In order to make this change, and to be within the limits of the law and not be liable to a fine for placing shares in France before we had obtained the permission of the Government so to do, we were obliged to change the date of the contract with Bernard Desouches and see the Underwriters and have them change their underwriting agreements. Some would not sign again and we had to secure new underwriters.

All of this has been a very great deal of worry, but I have met it and was congratulating myself on having gotten matters into a [256] very good shape, when I was called to the Bank and shown a copy of your Resolution for the delivery of the certificates of stock. I have not felt discouraged at any time, until I received this information. We had arranged for advertising and had secured a man who would endorse my notes for the money, provided we were paid from the first frs. 150,000 that came in. I had represented that instructions would come from the company to deliver the shares against the payment of frs. 7—and to pay to the managing committee of the Underwriting Syndicate the first frs. 150,000. After having met all the other conditions and then having to face the instructions which were sent by the Company, instructions which were not in conformity with my instructions sent with the contract, which they had evidently approved, needless obstacles placed in my way.

With the instructions which you have sent, how do you expect me to convince any one, that you will pay

the first frs. 150,000 as per the contract with Desouches?

The next question is, do you expect to pay it? If you do not expect to pay it, why do you deliver any certificates at all? If you made a contract with me to advance \$15,000,—while the only price which you were getting for the shares was fifty cents, and it would take 30,000 shares to make \$15,000, whereas it takes only 21,000 shares to pay the 150,000 francs; why do you not send the instructions to pay over to the managing committee the first frs. 15,000?

Do you realize that I have gone to my limit in providing cash to pay the expenses of the Tenabo Mining & Smelting Company? Do you realize that I am personally responsible for more money in the Tenabo than any one else is? And yet, here I am, confronted with this condition where it requires the length of time necessary to get you a letter and have a reply sent back with the signatures of the officers to an order before the bank can act.

What is the use of my having to worry over this? Just a little thought should have convinced the Board of Directors that they should have given some evidence that the first money would be paid out as [257] per the contract with Desouches. It is impossible for me to wait until I can get your signatures, but how I am going to meet this condition now, is more than I know. I will do it in some way or other.

I will have the attorney send you the originals of the contracts and instructions as to the method and manner of the payment of the money that may be

placed to the credit of the Company.

I know that you have done your best in this matter and I regret that the Board of Directors could not see their way clear to make my path a little smoother instead of erecting obstacles for me to overcome.

Very truly yours,

(Signed) P. B. LOCKER.

New York, Nov. 18, 1910.

Mr. P. B. Locker,

Hotel Chatham, rue Daunou,

Paris, France.

Dear Sir:—

We beg to advise you that 2000 of the nominative certificates have been delivered to us by the printer and are now being signed up. We expect same will be completed tomorrow or Monday, so that we can immediately proceed with the issuing of the French bearer certificates when they come from the printer, which, we hope, will not be later than Monday or Tuesday of next week.

You may rest assured that we will do everything in our power to expedite the forwarding of the French Bearer Certificates in accordance with your wishes and regret that so much time has been consumed in completing the transaction, but the work entailed has been great.

Very truly yours,

T. E. R. BEARDSLEY,

Trust Officer." [258]

**Complainant's Exhibit No. 14 [Letter Dated December 5, 1910, P. B. Locker to John Janney].**

“9, rue PILLET WILL, PARIS.”

December 5, 1910.

John Janney, Esq.,  
105 Mercantile Block,  
Salt Lake City, Utah.

Dear John:—

I am in receipt of the two resolutions: First authorizing the payment of the frs. 150,000 to the Managing Committee and the Second authorizing the payment of certain sums, to be approved by me, to Coleman, Iselin, Kroll & Ballin.

This arrangement is very good and very satisfactory to me. There have been certain advances made against commissions due to Ballin which will have to be deducted out of the first proceeds accruing to his credit; and the same with Kroll and Iselin because of subcontracts they made, and it could be held in no other way than by having the Bank pay up to the total sum of frs. 2 to my order.

Your forethought in protecting me in the matter of commission is a very good idea.

Mr. Picard will write you fully on the condition of affairs here. You will receive a list of the subscribers and comments by Mr. Coleman as to their financial standing. I am inclined to think that we shall be able to place the whole 450,000 shares with proper energy and effort. This will be a very satisfactory day for both you and me.

It has been necessary to take an office here in order

to have a meeting place for the Underwriters, from which agents will start in their canvassing and for general appearance sake in promoting shares. The rent of the office is 4,800 francs per an. The furniture in the office cost frs. 2,500. I bought it from the people who went out.

It would be a good idea to have what mining pictures you can secure sent here to hang on the walls. The one of the Utah Copper Co. would be good. If you can get one of the Rio Grande Railroad, which shows some of the high mountains and the railroad curves, it would also be interesting; in fact, you might, with a little effort get half a dozen [259] pictures that would be good to frame and hang on the walls here, to give an idea of that Western country and to bring in mining scenes wherever possible. A bird's eye view of Salt Lake would be good; some of the American Smelting & Refining Co's. Works; but you know as well as I do what would be interesting and suitable. It may cost a few dollars, but the expenditure is justified. Don't delay in this, but send them at as early a date as possible, for the time we need them will be when possible subscribers will be coming to the office.

We expect within the next few days to make an alliance with *two big banks* of good placing power who will father the issue to be made. I think the deal will go through and if so, it will be a great assistance to our present force.

In the matter of PIOCHE, as I have previously stated, to you, the Syndicate of bankers is placing railroad bonds for the Carnegie Trust Co. of New

York, and expect to be through with the issue by the first of the year, and propose to take up our proposition after January 5th. I don't know that this will materialize, but I have assurances from a number of the Syndicate. If it decides to take the proposition, we will have to act promptly and I will prepare all the data here and send it through for signature as we have made a great many mistakes in preparing Tenabo. The work may be materially lessened and many handicaps removed.

I have agreed with Mr. Hirschmann, one of the members of the Committee of Underwriters, that if the issue is placed, I will invest a certain amount in his bank and form an alliance for the placing of American securities. I believe if Tenabo is successful, that through the Underwriters and acquaintances I have made, we shall be able to form a *connection* here for placing big propositions, bonds as well as shares, and particularly guaranteed bonds.

I note what you say about Raleigh and hope that the statement sent by the attorney and by Coleman will assist you in financing any plan that you may want to carry out for work at Tenabo. [260]

I received the plates of the Tenabo photographs all right. We are now arranging the publication of the pamphlets, which will be issued since we now know that the certificates will be here in a few days.

I note the last remark of your letter 'Give my regards to Mr. Kroll and Mr. Ballin.' If you could be on the ground, and could know the position you would say 'Give them anything, but not my regards.' Kroll has proven himself to be an unscrupulous and

unreliable crook of the Russian Jew type, so if you have any communications from him, refer them to me, or use a very careful reply to anything that he may ask.

Mr. Ballin has been ill since his paralytic stroke in the summer and because I gave him money in the spring, he feels that he is to have me support him and though he is unable to do any work, he demands a commission as well as advances that would stagger a Rockefeller. So you see, I am not having smooth sailing here, and for all the difficulties you have, just add on ten and you will know how I feel. But I am in good spirits this morning, and my forecast is 'success.'

With best wishes,

Yours sincerely,

(Signed) P. B. LOCKER."

**Complainant's Exhibit No. 15 [Letter Dated April 7, 1911, to John Janney].**

PARIS, April 7, 1911.

Mr. John Janney,  
105 Mercantile Block,  
Salt Lake City, Utah.

Dear John:—

The mails have been delayed so that I have just received your letters of March 12, 22 & 23d.

In yours of March 21, you tell me about Edwards, King Fuller & Co. I have already explained to you in a previous letter the steps taken to furnish information concerning them. I will immediately take [261] the matter up now with the view of locating and determining the responsibility of these

people in Paris, and will cable you results. If they can carry out the plan proposed, you had better accept it.

Referring to your letter of 22nd, I appreciate the importance of your knowing accurately the facts concerning the proposition here. It may seem strange to you that a man cannot give you a definite and specific statement of what will or will not be done. If I knew this myself, I would know just what to do. I have endeavored in previous letters to tell you the impressions in my mind at the time of writing. I may not have been specific in each detail, but in general I have given you the ideas.

I note the enclosed memorandum and will review the facts stated to you.

There was no money paid by the underwriters at the time of making the subscription. This was a great mistake, but it was done on the advice of Coleman in the Banque Franco-Americaine and others who said that the only way to secure our underwritings was to move without collections. If I had it to do again I would not accept any underwriter who did not pay at least 25% in advance.

The amount of money deposited and the people who have deposited it are as follows:

	Amt. subscd.	Frs.
DOBB.	7,500	5,250
COLEMAN.	2,500	7,000
d'ANISY.	3,000	5,000
ISELIN.	2,000	7,000
PINAUD.	1,000	700
FISHER.	2,000	1,400
LENICQUE.	60	600

---

frs. 26,950

I hope to secure an additional cheque for frs. 7,000 today, with an agreement to pay frs. 7,000 more in thirty days. Also I have the assurance of Mr. Coleman of the B. F. A. that he has two friends who will pay their frs. 7,000 each.

As soon as the campaign of circularizing and work is under *weigh*, I believe that I will be able to collect from additional people, [262] making perhaps a total of frs. 250,000.

Several of the underwriters will undertake to place their shares which will be an additional assistance. The bankers with whom the underwriting committee made contracts have refused to go further under the present market conditions. They prefer to resist any legal proceedings against them and to pay what expenses they may have incurred rather than to undertake a campaign under present market conditions, realizing that they have a responsibility to the public and that we need a large sum of money to carry out our plan and with a view of paying dividends. They also realize that Mr. Coleman of the B. F. A. and in fact the underwriting committee it-

self cannot afford to push legal proceedings against them to compel them to work and that by refusing to move they are simply delaying the game and will be ready to go on when the market is better.

You will realize that I cannot wait for this and am turning heaven and earth to get sufficient funds to start a campaign of circularizing and sending agents into the country to sell the shares.

The *100,000 francs* placed in the Bank for advertising is held up in the same manner as the bankers are held up because in placing the money in the Bank it was stated that it was to be expended for publicity under the contract with the bankers. One string being tied to the other you see the predicament I am in. There have been no agents at work yet, there has not been any stock sold outright except the sixty shares which are to be delivered next August with *a view of keeping the shares* tied up while campaign is being made. However, if we have to go to the public there are agents to do it, and in the small way that I have outlined above, it will be necessary to deliver the shares and it will make our future operations in the raising of a large sum more difficult.

However, as it is a question of what is in fashion here, and if copper were to take a rise and a bank undertook to float the shares, they would be placed in a few days. Still, with copper at  $11\frac{3}{4}$  cents, the present depressed conditions on the market here as in N. Y., how can I force the people? You may say "Why don't you force the underwriters to pay?" I find that if I undertake to force them, rather than pay the [263] money in for us to expend, they will

pay it in to the Court, which costs me money to undertake to get it out, and which they can keep tied up for three years with little or no expense to themselves. Moreover, the B. F. A. does not want to be connected with a campaign of this kind. The underwriters claim that the spirit of an underwriting, whether it be stated or not, is that an effort shall be made to place shares before the money is called for, and that they will be disposed to pay when we have made a campaign.

I will bring the illustration closer home to you: Suppose a foreigner came to Salt Lake City and had a number of the influential men underwrite a proposition and they discussed the matter among themselves and decided that they would hold up the game, that they would not pay until they saw that the campaign could be successfully conducted. How long do you think they could keep this foreigner tied up in the courts there? The temperament of the people, their ideas of honesty and integrity in business are as different here from what they are in Salt Lake City as night is from day.

You ask what are the reasons for the dissatisfaction of the underwriters? A Frenchman never takes a chance; he went into this, believing that profits were certain and when you want to touch his pocket he needs no reasonable excuse to refuse, in fact thinks no other excuse is necessary, but merely throws up his hands and says: "I don't want to do it."

You ask are the matters serious? Yes, they are very serious: expenses are going on; we must provide

an amount of cash and we have no time to wait. If I were in a position to say "Yes, we will wait, and, at an opportune moment, we will place the shares," they would all agree with me, and when public feeling changed, they would all pay for their stock. You may get a very few people to buy, but could you now place a mining proposition on the market in N. Y.? What would they say to you if you were there?

This is what I am undertaking to do to overcome the difficulties. [264]

To raise as much money as I can, to prepare circulars and data, and by using the name of a bank here, get agents to go to the people and to send out circulars to about 100,000 people who are either correspondents or customers of the B. F. A. who have agreed to give me a list of these names. The money that has been put up is of course within the first 150,000 francs for expenses and by using this part I hope to sell sufficient shares to relieve our financial distress. To do this I must have shares released from the B. F. A. and must sell these shares.

I know that you have troubles there, but can you imagine the difficulties that I have to finance myself and carry on the necessary expenses here?

I have placed before you the cold hard facts as they exist, but I have not lost courage, nor have I any doubt but that I \* \* \*

**Complainant's Exhibit No. 16 [Letter, Dated June 9, 1911, P. B. Locker to John Janney].**

Paris, June 9, 1911.

Mr. John Janney,  
105 Mercantile Block,  
Salt Lake City, Utah.

Dear Janney:

Following my letter of Tuesday, we have now gotten about 50,000 circulars into the hands of the public. Replies are beginning to come in from the public and in addition to the forces which the Banque Chareire has working on this proposition, I have secured good men to visit the bankers in the Provinces and solicit their aid in placing the shares.

Ten thousand francs came in yesterday and I am expecting a few more thousands before the close of the week from people whom I know, not taking into consideration what the Banque Chareire may accomplish.

Conditions seem to be improving a little here and we may begin [265] a campaign of publicity, at an early date, in the form of newspaper articles. It is a question of moving within the limit of my means and this is determined from day to day. In order to provide the excess funds for the publicity in the journals, I may have to ask the release of a number of shares as we counted doing some time since. If so, and if it be urgent I shall cable you and the instructions in previous letters will indicate the line I shall want followed. Some of the banks which have their own papers are writing articles in them as

shown in the paper sent you by this mail.

I have no time to write further today, as a man with whom I have an appointment has arrived and I have others all the day till closing time, so will continue next mail day.

Very faithfully yours,

(Signed) P. B. LOCKER.

**Complainant's Exhibit No. 17 [Letter, Dated June 20, 1911, P. B. Locker to Tenabo M. & S. Co.]**

Paris, June 20, 1911.

Tenabo Mining & Smelting Co.,  
105 Mercantile Block,  
Salt Lake City, Utah.

Dear Sirs:—

Following my letter of the 13th inst. I decided to undertake to form a new syndicate to purchase the shares from the Tenabo Mining & Smelting Co. I have made progress in this and hope within the next few days to complete the Syndicate which will be formed to purchase 40,000 shares outright and to have an option on the remaining shares.

The contract of option to this syndicate will state that I have given to them the reports of Messrs. MacVichie, Brown, Gillette, L. Humphreys and Weston, that they have reviewed same and that they purchased the shares on the representations contained therein. You have nothing to do with it beyond that point, if they exercise their option. It is not your affair whether they sell them or keep them. [266]

This is about the only way that I see to get out of the situation that has been created by your telegram to the Banque Franco-Americaine.

You will no doubt follow my instructions upon receipt of my letter and will release to my order the 25,000 shares asked for.

This condition will make it possible to write new prospectuses in order to make the corrections that may be outlined in the communications which you are no doubt sending to me.

Very truly yours,  
(Signed) P. B. LOCKER.

**Complainant's Exhibit No. 18 [Letter, Dated June 30, 1911, P. B. Locker to John Janney].**

Paris, June 30, 1911.

Mr. John Janney,  
105 Mercantile Block,  
Salt Lake City, Utah.

Dear Janney:

I am in receipt of your letter of the 9th inst. and also of your various telegrams. On the 27th I sent you the following:

“Have you sufficient money—to be represented—Carson—If it is absolutely necessary—can borrow—\$400—telegraph requirements—will remit by telegraph—no shares were taken (by) upon the representation (that)—Prospectus—the necessary plans are now being made—for—new—campaign business is in excellent condition—instruct . . . . . to deliver B. F. A.—2500—in accordance with our request—or withdraw at once—telegram—B.F.A.—enable us—operate—Desouches—contract—promise will be faithfully kept.”

and on the 29th I cabled you through the B. F. A. \$400, which with the exchange here amounted to frs. 2.117,40, which was in reply to your cable "Remit at once it is necessary."

You will realize that I had to get this money loaned by people who have paid into the syndicate and who are awaiting my delivery to them of the shares of stock that they have purchased. I thought that this \$400 might help you out and I had to go to extreme measures to provide [267] it.

I must make clear to you that people have paid in their money on account of the Underwriting Syndicate, a part of which money has been applied on the expenses incurred in accordance with the terms of your agreement with Bernard Desouches which provided that the first 150,000 francs that came in were to go for expenses. At seven francs per share this requires 21,430 shares.

I want to ask this question: Is it possible for the Company now to make up its mind not to deliver these 21,430 shares when the amount of money has been expended in the interests of carrying through this project?

Can the Company make up its mind not to deliver 75,000 shares of stock, provided it receives its net for that amount in accordance with the contract given to me?

If the Company can change its attitude and decide not to deliver these shares and has still permitted me to spend the money in the interests of its flotation where am I to get the money to return to the people who have bought shares?

It seems to me that whatever attitude may be taken in America, they must deliver to me these 75,000 shares of stock which were sold by me to the underwriters, for the delivery of which I have the right to insist.

I can see no excuse whatever for their holding me up. I am not responsible for conditions that may arise other than to have a clear and distinct understanding with the person who purchases my shares as to their value as indicated in the reports on the properties of the Co. made by Messrs. MacVichie, Brown, etc. You have shares for sale and you want a purchaser. If that purchaser reads your report and says, I will buy your shares on the representations contained in these reports, and you will sell them to him, you have nothing further to do with it.

I have taken the steps indicated in your telegram and after the receipt of same, I saw to it that no orders should go to the B. F. A. [268] There were no shares sold as the campaign was discontinued pending the readjusting of the affair and the beginning of publicity to assist the bankers in their placing. I am now at this point: There are three men in Paris who control, to a great extent, the newspapers in France, and have leased to them all the year the advertising columns of these papers. These men have repeatedly refused to enter into any relation with me or the syndicate other than one based upon the payment of cash for the publicity. The campaign of publicity costing 100,000 francs is very little as compared with what many issues have. As it was impossible under the conditions you allowed

me to give more for publicity, I have continued my efforts with the view of arriving finally at the point where they would enter into an understanding with the syndicate to furnish the advertising on a corporation and participation plan, that is, that a certain percentage of the profits made above frs. 7. should go to the press and a certain percentage to the syndicate. I have finally gotten this to the point ready to be signed. These people will not wait. The Syndicate is anxious to sign it and I have delayed signing this contract from day to day by resorting to various means but I am at the end of my rope in that particular, and when you say to me "Don't make a new contract," I must disregard it for I cannot stop now, delay would prove fatal, as no one would take any further interest in the Tenabo M. & S. Co. if I told them that I could not deliver the shares. I may be running my head against a brick wall, but it is like a man who has the flood behind him and it is as well to butt his brains out as to drown, and he stands the chance of his head being harder than the wall! To quit now would cause all of the underwriters to say "Give me back my money." My reply would be "Here are the receipts which the secretary of your Committee has O. K.'d, amounting to over 100,000 francs which money has been expended in the interests of your syndicate. Their next remark would be "Give me the shares that I have purchased." Do you think that I could stand any say: "I won't give you your money and I cannot give you the shares"? To whom do I look to furnish these shares? It can only be to the Com-

pany. To cover the Company I have made two propositions: [269] Release to me 25,000 shares against certificates deposited. I thought that you would deposit your shares, being there, and not necessitate my sending mine through B. F. A. and I told them that I would ship them to you upon the deposit of your certificates, and the release here of Bearer Certificates.

The second proposition was to withdraw your telegram from the B. F. A. and permit the shares, agreed by you, and subscribed for by the Underwriting Syndicate to the extent of 75,000 shares, to be taken up. Up to the present time I have only received this reply: "Don't make any new arrangement." It is not for a new arrangement: it is to carry out old arrangements.

I can see only this to do: Have the Syndicate sign the contracts and keep the machine running: When it comes to the time for them to demand their shares at the B. F. A., I can then cable you to deliver the shares against payment, without responsibility to yourselves other than that incurred by the representations contained in the reports, and the failure on your part to deliver the shares will place the entire burden on the Company, and not on my head, and I will leave it there for the Co. to settle with its creditors for I don't intend to be swamped to any further extent than I am at present by the Company.

I realize full well, Janney, your position, and I feel perhaps more keenly the burdens you are carry-

ing than those that I am myself carrying. You do not realize the attitude of these people here nor do you realize their methods of dealing. I have not intended to say anything in this letter that is a criticism on anyone, but to point out to you the conditions as they loom before me today.

Faithfully yours,

(Signed) P. B. LOCKER. [270]

**Complainant's Exhibit No. 19 [Letter, Dated July 7, 1911, P. B. Locker to John Janney.]**

Paris, July 7, 1911.

Mr. John Janney,  
105 Mercantile Block,  
Salt Lake City, Utah.

Dear Janney:—

I beg to acknowledge receipt of your cable of this day as follows: "Everything is favorable—the difference is likely to be arranged—will telegraph as soon as—can they promise?—sale is certain—40,000—as per your letter of 20th," and to which I replied as follows:

"In reply to your cable of 6th—can promise—sale is certain—everything is favorable—here—if you think it advisable—for our mutual interests—will sail on—July 12—Salt Lake—must be here not later than—Sept. 1. Answer immediately by W. U. T. Code."

There is nothing new to add to this other than that we have closed the contracts for publicity that will give to us practically the entire press of France and with this there is little or no doubt that we shall be

able to place our entire issue.

We will have the 40 parts completed as soon as I know that I can move ahead. In view of this I have thought that it was perhaps to our mutual interest that I should come to Salt Lake and have a clear understanding of the conditions under which I am operating.

Very truly yours,

(Signed) P. B. LOCKER. [271]

**Complainant's Exhibit No. 20 [Letter, Dated July 11, 1911, P. B. Locker to John Janney].**

Paris, July 11, 1911.

Mr. John Janney,  
105 Mercantile Block,  
Salt Lake City.

Dear Janney:—

I have received your letters of the 24th and 26th. I note that the Company will not deliver the Bearer Certificates in lieu of the nominative certificates that I propose to deposit, and which it has been previously stated to me would be delivered.

Your letter of the 26th seems to crowd in so many of the impossible things that it is hard for me to understand it. It is useless to undertake to analyze this letter for you are too intelligent a man, when you place yourself in my position, not to see the absurdity of it.

At first you state that you are bound by the Desouches contract, then you say Desouches can form a new syndicate just as if it were walking around the corner to take a drink; that it is very easy for him to have 36 men walk down to the Bank and pay

in their \$100,000 and stand back and say "Now I will make you give me the shares." You know this country here is just full of that kind of person. Then you go ahead and say that after these people pay in their money and they put agents out and sell the shares, that if a receiver is appointed, that you will hold the money in the Bank and give it back to them, assuming that the agents who sell shares are perfectly willing to work to sell Tenabo shares and if it meets with the pleasure of the Tenabo to give back their part of the money, the said agents will be perfectly willing to return their commissions. You have had enough to do with agents in America to know that you will have them standing in line waiting for such glowing opportunities.

You will also find bankers who are willing to pay the agents their commissions out of their own pockets and then when they have to give the money back to the client they are perfectly satisfied when they have lost the agent's commission as well as their own work. [272]

Then it is very easy for me to have "the underwriters" (whether you mean one or two or all of them or the man who made the contract, or what not, I am not sure), but they can "demand the enforcement of the contract, offer the payment of the money and make a written statement that they will confine themselves to statements of facts as above stated." Janney, do you find underwriters out selling shares of stock? Would you, if you were an underwriter, sign a statement that no agent who went out would state a single thing excepting in the terms in which

you yourself might state it? In fact there are many questions I could ask along this line, but I know it is useless as you know them well enough yourself.

The letters containing the above were received yesterday and this morning I have received a telegram from the Company as follows: "Should not return home—good progress is being made with."

I had made my arrangements to leave to-morrow morning for America as I believed that I could, by talking with the Board of Directors perhaps enlighten them upon some of the points which it seems I have unfortunately been unable to make clear to them in my letters. But after reading this telegram and cancelling my passage and all, I was handed your letter of the 28th and this is the last straw to break the camel's back. You enclose two resolutions, one to me and one that you have sent to the Bank Franco-Americaine and if anything in the world could be more foolish, more unnecessary, than the resolution you send to the B. F. A. then I don't know what it is. You have written them and said that they are not to issue the shares. What do you think the B. F. A. is? A guardian for the Tenabo? What powers have you delegated to the B. F. A.? Only the power to deliver shares against the payment of money: This you have withdrawn, then why do you tell them of the telegram that you have sent me? If there was ever a decided effort to queer your entire proposition, you have certainly sought the most extreme measure. I have explained to you that the B. F. A. was going out of its real scope by becoming the signer of your Trust Agreement. The B. F. A. has nothing to say, has

no power whatever, nor can it direct in [273] any way what is contained in the prospectus.

What would the Company say if the B. F. A. issued a statement or undertook to transact business for you without your authority? Had you first delegated to them the powers of guardianship, then you would be right in sending such a resolution, but otherwise I cannot understand it.

I am thoroughly convinced at this writing that you have closed the doors to any possibility of doing business in France.

I don't believe that the B. F. A. will remain the signer of your Trust Agreement and I look before the day is over to be notified that the Trust Agreement will be cancelled and that they will not do business with you. I am inclined to think that I shall take the boat on Saturday for America, although I may decide to wait until I hear from you with something more definite. I think that I have been treated without consideration and I am thoroughly discouraged and disappointed.

Very truly yours,

(Signed) P. B. LOCKER.

P. S. I wish to have your remarks on the enclosed statements.

**Complainant's Exhibit No. 21 [Receipt, Dated July 6, 1911].**

Paris, July 6, 1911.

RECEIVED from Mr. P. B. Locker, the sum of Twenty Thousand (20,000) francs, being the first installment made according to the conditions of the contract for publicity entered into this day between

Mr. P. Tricart, representing the Underwriting Syndicate former to aid the placing of the shares of the TENABO MINING & SMELTING COMPANY, and myself, representing the Agence Nouvelle de Publicite.

For the Agence Nouvelle, Administration,  
(Signed) PIERRE THIEBAUD. [274]

**Complainant's Exhibit No. 22 [Letter, Dated July 11, 1911, P. B. Locker to Tenabo M. & S. Co.].**

Paris, July 11, 1911.

The Tenabo Mining & Smelting Company,  
105 Mercantile Block,  
Salt Lake City, Utah.

Gentlemen:—

I hand you herewith a statement of the expenses that have been incurred by me in the interests of the TENABO MINING & SMELTING COMPANY.

Those who have furnished me the money to meet a part of these obligations and those who have given me credit for the rest have done so because of their confidence in me and I have given my guarantee for the repayment of these sums based upon my confidence in the Board of Directors of the TENABO MINING & SMELTING COMPANY and in my belief that they would act at all times in a fair manner and with full appreciation of the efforts that might be put forth in the interests of their company.

The enclosed statement is not all of the expenses that are necessitated in making the flotation of the shares in France. There is an item of taxes which is guaranteed by the Banque Franco-Americaine and for which they are liable at this time to the French

Government to the extent of perhaps 45,000 francs. There is an additional charge of 10 centimes per share (or one franc per certificate) fee to the Banque Franco-Americaine for the delivery of the shares. Furthermore there are commissions to be paid to several parties who have assisted me.

All of these expenses must be paid from the seven francs per share, the price at which the shares are sold to the Syndicate.

In the placing of the shares with the public, the Syndicate gives one-third of its profits, that is one-third of the difference between seven francs (purchase price) and the price at which the shares are sold, to the Press of France under the advertising contract. It is figured by the Press that this  $33\frac{1}{3}\%$  of the profits will amount to at least 450,000 to 500,000 francs. This assures the co-operation of the Press until the shares are all placed. You can realize the advantage of such a contract. [275]

I have sent to Mr. Janney a statement covering the expenses incurred by me personally and not included in the attached statement, but which are nevertheless wholly on account of the Tenabo Mining & Smelting Company. The total amount of the two statements is frs. 238,452,81. At seven (7) francs per share this represents 34,064 shares of stock. For the Banque Franco-Americaine to deliver these shares I must pay the frs. 3406 fee for their delivery, same being fr. 1,—per certificate, as per my arrangement with the Bank.

To make the situation perfectly clear it is this:—

These expenses have been incurred and must be

met. As the Tenabo Mining & Smelting Company has not the money in its treasury, it cannot pay them in cash, but it should deliver shares, as agreed in the Desouches contract, to the extent of frs. 150,000. This does not cover the entire amount and the Company can facilitate the placing of the shares by delivering the total amount of the shares required to cover these items.

The Company can be protected, if it thinks such protection necessary, by allowing the deposit of Nominative Certificates in an amount equal to the number of shares to be released.

I have secured the credit shown in these statements based upon the evidence in the Desouches contract that the proceeds from the sale of the first 21,430 shares of stock, or the 21,430 shares of stock themselves, would be delivered in the liquidation of such claims.

I would like to have the Board of Directors, upon the receipt of this letter, authorize the Banque Franco-Americaine to deliver to my order 34,064 shares and further instruct the Bank to deliver the remaining shares as and when called upon by me, against the payment of frs. 5.— per certificate, the said frs. 5.— to be transmitted to the Tenabo Mining & Smelting Company under the terms of the contract entered into with me.

I will undertake to have all those who have any interest in the Syndicate, or who will sell shares, to have a copy of the reports of your engineers and to the best of my ability will prevent misrepresentations. [276]

I acknowledge receipt of your telegram as follows:

“Should not return home—good progress is being made with.”

I will await a telegraphic reply to this letter as to what you propose doing with regard to the delivery of the shares.

Yours truly,  
(Signed) P. B. LOCKER. [277]

EXPENSES INCURRED BY P. B. LOCKER.

		Amount.
Windsor Trust Co. Printing Bearer Certfs.		Fr. 22,716.56
Windsor Trust Co. Fees (#3,000)		15,600.
Signing Certificates: Knap	\$1310	
	Zimmermann 610	
	Chandler 370	
	Eastmant 410	
	\$2700	14,040.
De Molenes' Fee (per Mr. Picard fr. 1500)		
per Mr. Simonet 1500)		3,000.
Insertion notice in Bulletin An. Jrnl. Official		1,600.
Engineer's letter (Colomar)		62.50
Am. Express Co. shpg. plates for use prospectus		8.20
Recording lease		200.
Office rent (2 mths. Nov. to Jan.)	814.	
1st term 1911 payable advance	1220.65	
2nd “ “ “ “	1220.65	3,255.30
Installation telephone	178.	
Abonnement first quarter Jan./11	100.25	
2nd “ “ Apr./11	100.25	378.50
Larue for brass & marble plates		107.50
Secretarial work Aug. to Nov. 10		
	Underwood fr. 68.	
	Rolison 254.	
	Fisher 846.80	1,168.80
Amer. Consul legalizing Trust Agmt.		62.40
Amer. Consul legalizing new Trust Agmt.		62.40
A. L. PICARD		12,198.05
Electricity Dec. 1910 frs.	18.60	
Jan. 1911	22.30	
Feb.	18.60	
Mar.	9.15	
Apr.	5.20	72.85
	Frs.	74,533.06

456 *Tenabo Mining and Smelting Company*

Electric bell mended	9.50
Secretary Nov. 22 to May 22, 1911	2,400.
Office boy Nov. 22 to Dec. 19, 1910	67.
Hiring chairs for Committee meeting	10.
Office boy Dec. 19, 1910 to May 1, 1911	552.
Huot for maps	250.
Concierge tip Xmas fr. 60	
April 29.35	89.35
Telephone garcon before installation of phone in office	20.
Postage and cables	114.70
	<hr/>
	78.045.61

I have compared the above amounts with the receipts and find them correct.

(Signed) EDOUDARD d'ANISY,  
 Secretary Managing Committee Underwriting Syn-  
 dicate Tenabo Mining & Smelting Company,  
 Proxy for Mr. BERNARD DESOUCHES.

[278]

Copy—Expenses Incurred by P. B. Locker.

In view of issuing and placing the shares of the Tenabo Mining & Smelting Company with the French public under the contract between said company and Mr. Bernard Desouches, to be paid from the 150,000 francs provided for expenses.

May 1 to July 1, 1911.	c/f	Amount.
		78.045.61
June 1, 1911.	Office boy	125.
22,	Secretary	400.
	Commissions Jonquiere	
	1500	
	500	2.000.
	<hr/>	
	Bocande	3,000
	More	250.
	Kugelmann print	7900
	Erhard print	1892
	Postage	4785
	Bamburger	100
	De Thomas	100
	Dauriac (add. & Env.)	300
	Didier de la Braie	
	add. & Env.	9.75
	Stamps circulars	30
	25 copies Bul. An.	12.50
	Roneo	252
	<hr/>	
	Balance publicity contract	84.368.75
	Telephone subscription	100.25
	Miss Ross secretarial work	225.
	Electricity	1.80
		<hr/>
		183.897.66

I have compared the above amounts with the receipts and find them correct.

(Signed) EDOUARD d'ANISY,  
Secretary, Managing Committee Underwriting Syndicate.

TENABO MINING & SMELTING COMPANY,  
Proxy for Mr. BERNARD DESOUCHES.

**Complainant's Exhibit No. 23 [Letter, Dated July 13, 1911, P. B. Locker to Tenabo M. & S. Co.].**

Paris, July 13, 1911.

Tenabo Mining & Smelting Company,  
105 Mercantile Block,  
Salt Lake City, Utah.

Gentlemen :

The enclosed is the list of the names and amounts paid to me under the underwriting contract :

Messrs. Coleman	14.000
Pinaud	7.000
d'Anisy	5.000
Tricart	42.000
Desouches	7.000
Moranger	3.500
Mars	7.000 [279]
Fisher	1.400
Lenicque	600
Dobb	5.250
Karamitsas	3.500
	<hr/>
Frs.	96.250

Very truly yours,  
(Signed) P. B. LOCKER.

**Complainant's Exhibit No. 24 [Letter, Dated July 13, 1911, P. B. Locker to Tenabo M. & S. Co.]**

Copy.

Paris, July 13, 1911.

Tenabo Mining & Smelting Company,  
105 Mercantile Block,  
Salt Lake City, Utah.

Gentlemen :

Since writing to you two days ago, I have been

thinking the matter over and trying to figure out some way by which the company would be fully protected and at the same time to outline a plan of procedure that would meet the conditions here and make it possible for me to move.

That you may be thoroughly acquainted with the various steps taken I enclose the following data which is self-explanatory.

1. Contract with Mr. P. Tricart, representing the Syndicate which contract is proposed to replace the Desouches contract.

2. The form of underwriting to be signed under this contract.

3. The proposed advertising contract.

4. Receipt for frs. 20,000 paid under this contract. This together with the personal guarantee of Mr. P. Tricart was accepted by the advertising agency and by this we are bound for the payment of 75,000 francs.

5. Statement of the names and amounts paid to me by subscribers. To put into execution a plan to carry into effect the intention of these contracts under the conditions here, I suggest the following:

The function of the B. F. A. is only as follows:

(a) To deliver shares under the written instructions given by you.

(b) To pay dividends as provided in the trust agreement.

(c) To stand guarantee to the Government for the taxes of the company. (As previously stated to you, the B. F. A. is liable at this time to the Tax Dept. for at least 10% of our taxes and perhaps for more).

Further than the above and the other clauses in the trust agreement [280] relative to publications and so forth, it is understood that the B. F. A. has no other responsibility.

As compensation for the above, they are to receive: (a) Fr. 1. per certificate of 10 shares on each certificate delivered, as a delivery fee; (b) The amount of the tax on each certificate as and when this certificate is delivered. (This tax amounts to not less than frs. 2.50 per certificate and is to be deducted and held by them to protect their guarantee.)

You see from this that the B. F. A. will retain in its hands about 35 centimes per share, or frs. 3.50 per certificate of 10 shares each on all shares delivered. As shown by the statement enclosed in my previous letter the bills amount to frs. 183,897,66. At seven francs per share, the bills represent 26,271 shares. There are, however, the following expenses to be deducted from these 7 francs as and when the shares are delivered.

1. B. F. A.	FO	35
2. Tricart		25
3. Coleman		25
4. Kroll (perhaps)		12½ after
5. Other small commissions such as Ballin etc.		21,430 sh. are deld.
probably another 25 c. 25		

free.

Making a total of—fr. 1.22—½ per sh.

A part of this, that is, the commission of Ballin and Kroll, not being paid until after the first 21,430 shares have been sold and delivered. This leaves approximately fr. 5.90 per share net with which to pay the expenses. The expenses therefore represent between 30,000 and 31,000 shares. Sum is to pay

Messrs. Tricart, Coleman, Kroll, Ballin, Iselin and such other expenses as may be necessary. This leaves frs. 5 to the credit of the company.

As a protection to the company, you can send such instructions to Mr. E. d'Anisy as you may think necessary, it being however, understood that the first monies to be paid shall be 25 centimes each to Messrs. Coleman & Tricart. The remaining amount to be paid will form the subject of another communication.

Very truly yours.

(Signed) P. B. LOCKER. [281]

**Complainant's Exhibit No. 25 [Letter, Dated July 18, 1911, P. B. Locker to John Janney].**

Paris, July 18, 1911.

Mr. John Janney,  
105 Mercantile Block,  
Salt Lake City, Utah.

Dear Janney:—

After writing on the 11th and 13th, I don't know that there is anything that I can add to the statements contained in these letters. It is difficult to give any fuller explanations than are contained in them and I have written thus fully that the Directors may be well posted on the affair, and that they may realize that it is not for my personal interest that I have been working but I have been giving my best efforts to the company. It is now the 18th and I have had no report from you concerning the outcome of the legal proceedings on July 15th, date indicated in your letter for the decision to be reached.

I was called this morning by one of the underwriters who has taken shares and informed that he

had disposed of a part of his holdings and that he must have the certificates to deliver. He has sold these shares at the price at which they will be listed on the market and the underwriters have to guarantee not to let the shares return on the market before the issue is completed. You see that this demand necessitates my delivering the shares to the underwriters, and the question arises how am I to get the shares. I have made the case out to him, have read him part of the letter previously addressed to you for the delivery of shares to Mr. Tricart and to cover the conditions I am sending a demand to the company for the delivery of the shares.

If no other condition can be made, I will demand the delivery by the company of the shares to the order of Bernard Desouches and on payment of the seven francs per share, and will demand that the Banque F. A. return the money to me to the amount of frs. 150,000. The Bank, as you realize, will not assume any responsibility vis-a-vis the company for the delivery of shares to me and naturally will not deliver shares until you give them the necessary instructions.

I don't know whether you appreciate fully the position in which I am placed, but you should be able to realize this condition fully and I hope that the company has not the idea that it wishes me to give 2 years of my [282] time to this affair and then to cloak themselves in legal technicalities and leave the burden and responsibility upon my shoulders. I think I shall cable you \$200 to-day so that you can feel free to cable me full information con-

cerning the situation.

I shall cable you not to act upon my letter of the 11th, but to await arrival of that of the 13th. I enclose herewith a demand for the delivery of the shares to the order of Bernard Desouches, so that there may be no excuse for the failure to deliver the shares. If you were here and knew the difficulties that I have to overcome and then work that I have done, you would realize how hard it is to have the additional worries that arise from such a condition as exists at that end.

I hope that you are not letting the damned prospectus rest in your mind and that you will feel that you have fully protected not only the interests of the company but the honour of the gentlemen who are associated with Tenabo. If I Have five minutes with you it would be very easy to explain the whole affair, but it is no use trying to argue about what has been done; we should correct the faults and move ahead. A full knowledge of the entire facts in the case would make your mind perfectly easy.

As stated above I enclose herewith the letter to the Tenabo M. & S. Co. which you may use or not as you think best. There is one thing certain that we must get this affair floated and the floating of this will place me in a position to float the other propositions that we may have.

I think that I have the foundation for successful flotations here and the knowledge of conditions that I have acquired in my work will equip us for success. This is not the time to throw up our hands and quit, for we have to fight this game to the finish and

there is only one result to look for, and that is success.

As ever yours,

(Signed) P. B. LOCKER.

**Complainant's Exhibit No. 26 [Letter, Dated "Juillet 25, 1911," P. B. Locker to John Janney].**

Paris, le Juillet 25, 1911.

Mr. John Janney,  
105 Mercantile Block,  
Salt Lake City, Utah.

Dear Janney:—

I am in receipt of your letter of the 11th and 12th and this morning have wired you as follows: [283]

"Have received your letter of the 11th—refer to our letter of 11th—refer to our letter of 13th—what action will they take?"

Your letter of the 11th is clear and I have carried out the ideas contained therein to the best of my ability as shown in my letters of 11th and 13th.

In arranging this matter I could not come to the conclusion of the Syndicate, that is the underwriting of all of the shares until I had some definite information from Salt Lake. From my letters written to the company, you will see that the money paid practically cover 30,000 shares of this stock and that it will not be very difficult for me to arrange to have, as soon as work begins in September, perhaps 20,000 or 30,000 more shares paid for and to be able to remit to the Company sufficient money to liquidate the obligations that you have and to continue the work.

The plan that I have carried out has not necessitated my making any representations as to the exact

amount that would go into the treasury. The parties interested in the contract receive a commission which fully protects me in the matter of receiving a commission myself, and I say to you frankly that my idea is to pay the expenses that have been incurred on behalf of Tenabo both by you and by myself, take for ourselves a reasonable profit, all of which we can itemize in a full and complete statement, and continue to lend our support to the company not only in our personal efforts but in our liberality from a financial standpoint.

The advertising, as shown in the contracts, will commence at the time that we elect, namely when the people begin to return from their holidays, between 1 and 15th September, but it is not advisable to spend money before Sep. 15 for publicity. Between Sep. 1 and December 1st, we will dispose of practically all the shares with the campaign that we have organized. This campaign will include not only all of the Journals but it will also include sending out circulars by various banks as was previously planned. We have had several men visiting the provincial bankers and it is estimated that we have about 100 of these at the present time, who will work on the affair when the publicity begins, for publicity in the journals relieves the small banker in country towns of the personal responsibility that he [284] would otherwise have and his ability to show what various journals are saying of the affair facilitates his placing shares. Advertising here is done differently from the American way. You never see display advertising here; it is all in the form of reading

notices and comments in the financial sheets.

I have been called up twice today and asked when I was going to deliver the shares that have been underwritten and paid for. I make all kinds of "stalls" but have held them off just about the limit. One day they will come in and demand their money or the shares and I will be in the devil of a fix inso-much as I shall be unable to deliver either one or the other.

In your instructions to the B. F. A. on the Bernard Desouches contract, you did not require that all 75,000 shares should be paid for at one time, and in fact the getting of a syndicate in its entirety was my own idea with the intention of protecting all those who had given me credit. Your plan has always been to deliver shares as and when called for on the payment of a certain sum of money, and because I have undertaken to form a syndicate on account of the backing that it gives, it does not entitle the company to say "Place the entire amount of money in the bank and then demand that we deliver the shares to you."

Your suggestion in the letter of July 12th, of the kind of letter to be written would be very easy to comply with if the conditions that you suggest in your letter had been those which actually exist, but my letters of the 11th and 13th will no doubt make it equally clear what is the actual state of affairs. I recognize how difficult it is for you to interpret in one season the letters that were written in another. You must realize that conditions change and I have already told you that I write of the conditions of the

day as they confront me. To illustrate, when it was decided that we would only send out circulars and not do the advertising, this decision was taken because we were not in a position to afford the advertising, had not the money to incur the expenses, and the market conditions were different from what they are today. Afterwards conditions changed. I was able to raise the money necessary to make a contract along the lines that I deem the most advantageous, and had I been able to make this kind of contract in [285] October of last year, I would have had all the shares placed long ago. If I can combine the advantages of circulation, with the advantages of advertising in the provinces and call on the provincial bankers, I am simply more advanced than when I discussed the various conditions separately. Conditions are very different in France from what they are in America. It would be impossible to sell anything today because of the attitude of the public owing to the difference between Germany and France, but these affairs take on a different aspect from one week's end to another and if you hit at the proper moment with sufficient blare of trumpets, you are likely to dispose of the goods that you have for sale, and I presume that the company is willing to assist me in my efforts rather than to try how difficult they can make it for me to work.

Faithfully yours,

(Signed) P. B. LOCKER.

**Complainant's Exhibit No. 27 [Letter, Dated August 8, 1911, P. B. Locker to John Janney].**

Paris, August 8, 1911.

Mr. John Janney,  
105 Mercantile Block,  
Salt Lake City, Utah.

Dear Janney:—

After writing you yesterday I received your letter of the 28th of July, acknowledging receipt of mine of the 13th. I also received a letter from Mr. Smith, which you no doubt read. I have also received today your cablegram as follows: "KINCOBXGEM, BREGMATIUM," which I take to mean "Waiting until examination Gem books and papers," and shall await anxiously the result of the investigation and the decision of the Board of Directors. I don't know that Mr. Smith's letter calls for a reply directly, but I will refer here to the second paragraph which is as follows: "the only qualification of this was that from the first moneys received from the sale of stock that you were to be reimbursed certain amounts . . . the intention of course being that your negotiation would be successful and would result in the sale of the stock and that you would be reimbursed from the first proceeds."

In reply to this I would say that no one knows when the first shares are sold that the sale of all the shares will be made, and the question where negotiations "would be successful" or unsuccessful can only be determined after the first moneys are received and

I cannot see the reasoning that would [286] deduce the conclusion that the expenses were "Unauthorized and without consideration." However, these points come under the heading of technicalities rather than of good faith and intention in financing the corporation in the interest of its stockholders. Every stockholder is interested in having the company financed and the intention, as I understand it, has always been that I should advance the money with which to conduct a campaign of effort to place the treasury stock and that from the sale, if there be a sale, I shall be reimbursed those expenses to the extent of the money that I have paid out legitimately on behalf of the corporation. This amount was however limited to francs 150,000 and any amount in excess of that would only be paid by the directors if they considered that they were made in good faith and in the interests of the company. At this time, as shown in the statements sent to you, the shares sold and the amounts received for them amount to frs. 96.250—You cannot deny that that money is due to me, nor can you deny that the money that will come from the sale of shares to the extent of frs. 150,000 is also due to me. The amounts in excess of that you can refuse to pay, but I believe that the Board of Directors will recognize the necessity of the additional expenditure and will give to it their approval.

In the second paragraph of Mr. Smith's letter he further states: "If you had consummated the negotiations and had sold the stock in compliance with your contract." . . . I have consummated the negotiations which have received the approval of the

Board of Directors, which recognition authorizes the payment of the frs. 150.000.

There is a misunderstanding of my intention as to the shares of stock to be delivered. The shares of stock that I wish delivered are only those which would be delivered to the individuals whose names I have sent to you and who have paid for their shares, and such other shares as will be delivered to the individuals who pay their cash, which cash goes to pay the additional expenses incurred and which at the present time have not been paid, but for which I have been given credit. Under these conditions, you will see that it is not my intention nor could I go into the market and take advantage of publicity, which publicity is paid for by me and for which I am obligated.

The representation to the purchaser that the shares are treasury stock is [287] equally true whether I gave to the company shares of stock in an equal amount as a guarantee and protection to them or whether I do not give those shares and the company pays the expenses. And my suggestion that I give to the company 21,000 shares as a protection to them was only to convince the Board of Directors that I had confidence in the results to be derived from the expenditure made by me, rather than an exchange of nominative shares for bearer shares.

As to the proper action in the matter of the Receivership I leave that to the judgment of the Board of Directors, who are more familiar with the conditions than I could possibly be, but it is equally true that shares of stock sold prior to the time of this

Receivership being secured were sold in good faith by me and purchased in the same spirit by those who bought the shares and if the company be unfortunate enough to have a Receiver appointed, it is not my fault, nor should the entire burden rest upon me, and until such Receiver be appointed, the company, I would claim, has no right to prevent the delivery of shares sold prior to the time of such notice to me, and there is no reasoning that I can see that would deduce the conclusion that I, having no control over the question of litigation that might arise in the company, and having expended my money and time in good faith, should be called upon to carry all of the burdens. Moreover the question of the prospectus does not enter into this as all of those who have purchased or contracted to purchase the shares of stock did so before the prospectus existed and only the reports furnished by the engineers of the company were offered as evidence in such sale.

My statements as to this affair are not a criticism of any act of the Board of Directors. I only make clear my views on the subject and assume that the Board of Directors have done the best they could under the circumstances and I appreciate to the fullest extent all the assistance and co-operation that they have given me. There is nothing new at this end except that I am almost afraid to enter my office for fear of finding someone standing at the door asking me to give back his money or to give him the shares, and if I don't hear from that end soon, I think I shall be forced to take a protracted vacation. So far I have only taken a week end in the country,

not feeling sufficiently in spirits to go further afield while [288] anxiously awaiting the decision from your end.

Faithfully yours,

(Signed) P. B. LOCKER.

**Complainant's Exhibit No. 28 [Letter, Dated August 22, 1911, P. B. Locker to John Janney].**

Paris, August 22, 1911.

Mr. John Janney,  
105 Mercantile Block,  
Salt Lake City, Utah.

Dear Janney:—

I spent Saturday and Sunday in the country and returned yesterday. On my arrival I sent you the following cable. "Are there any further developments?"

A have been shunning the man who is after me for the certificates and unless I have something new in your reply cable, I shall have to go to the country again. I enclose you a copy of the letter written to me by Mr. Beardsley introducing Mr. Dumont. Mr. Dumont is a Frenchman who has lived in N. Y. for a great many years. He is making a flotation of a projected railroad from Memphis, Tenn. to Pensacola. I have been able to secure introductions for him and there are two parties considering his scheme.

The letter from Mr. Dumont to me, enclosed, gives you an idea of the attitude of Mr. Beardsley. Mr. Dumont, after going over the Tenabo affair very

thoroughly with me here was of the opinion that I would meet with success in my flotation.

Faithfully yours,

(Signed) P. B. LOCKER.

**Complainant's Exhibit No. 29 [Letter, Dated October 23, 1911, P. B. Locker to John Janney].**

Paris, October 23, 1911.

Mr. John Janney,  
105 Mercantile Block,  
Salt Lake City, Utah.

Dear Janney:

After thinking the matter over, I have cabled you as follows: "In reply to your telegram of 22nd can send frs. 15.000 about Nov. 5th, full *praticulars* will reach you by letter of October 23rd.

Faithfully yours,

(Signed) P. B. LOCKER.

**Complainant's Exhibit No. 30 [Letter, Dated October 23, 1911, P. B. Locker to John Janney].**

Paris, October 23, 1911.

Mr. John Janney,  
105 Mercantile Block,  
Salt Lake City, Utah. [289]

Dear Janney:

I beg to acknowledge receipt of your cable of Oct. 17th, as follows: "In the suit now pending—difficulty easily overcome if we can pay—liquidate all claims—can you offer subject to immediate reply by telegraph—\$5000."

and that received this morning as follows:

"Have you received our telegram of 16th \$3000—removes the objection."

I am studying the situation and trying to figure out what reply to make to you.

The situation here is thoroughly familiar to you from my previous letters. However, I may be able to raise the \$3000 which frs. 8.000 is tied up by Mr. Picard our lawyer. The balance could be drawn out by the company, and if you will study the resolutions sent to the B. F. A. as to the drawing of money, and were to carry out the ideas included in that, sending to me a check, I would have it cashed and the B. F. A. would telegraph the money to you. I state it in this manner as all of the money is covered by a letter written by Picard, but frs. 8.000 are all that his amount represents, and I could have the remaining sum transmitted to you. Next: We have 6000 francs that will be paid to the office about Nov. 5th, another frs. 3.500 that will be paid in about the same time, making frs. 9.500, and with the balance in the B. F. A. frs. 4.043, this makes a total of frs. 13.543. This is not quite the \$3000, but I would probable be able to raise the balance, making up a total of frs. 15.000.

If I am not able to raise the money and transmit it to you by telegraph before the time you receive this letter, I should be able to deposit in the B. F. A. an amount which, together with the frs. 4.043 held there, would make up the sum you require, i. e. frs. 15.000. As soon as I am able to deposit this money I will have the B. F. A. cable that they will accept a draft drawn on them by the company for the frs. 15.000.

My idea is that you should get from the Directors, about 20.000 shares of stock delivered to Mr. d'Anisy

of the syndicate against this payment of 15.000 francs and have shares delivered up to 40.000 against the payment to you of 20.000 francs more. However, I don't want to send to the B. F. S. any [290] documents that will be a record showing that you deliver shares against the payment of fr. 1. per share. Word your document to be merely an authorization to the bank to deliver to Mr. d'Anisy 20.000 shares, and when I telegraph to you five, ten or twenty thousand francs more, authorize them to deliver all the shares as requested. In other words, I don't want in the B. F. A. any record showing that shares are delivered at such a low figure. You can simply authorize them to deliver to Mr. d'Anisy so many shares against his payment to them of the tax called the "abonnement an timbre" on the shares delivered, provided I have telegraphed to you the money in advance or have had the B. F. A. telegraph you that they will accept your draft for given sums of money.

This covers the shares up to 40.000. After 40.000 you will authorize the B. F. A. to deliver to Mr. d'Anisy the shares against the payment of frs. 7.—per share and to credit my account with the difference between frs. 7 and frs. 5.—transmitting the frs. 5. to the Tenabo Mining & Smelting Co. Of these frs. 5. that part covering our profits will be distributed as we may hereafter agree upon.

I have recounted the above to show you that at the present time I have frs. 4.043 in the bank to the credit of the Tenabo M. & S. Co. In addition to this, I have the agreement of two parties to pay to me about Nov. 5th frs. 6.000 and frs. 3.500 respectively.

This makes a total of 13.543 francs and I should be able to raise another frs. 1.500 about, to make up the \$3.000.

You see that I must do this outside the Syndicate because I cannot go to them when I have not delivered their shares and ask them to give me some money, as it would bring upon me a firm demand for the shares. The unsettled conditions of the Moroccan affair has made the syndicate easy to handle up to the present time, but conditions are improving now and I may look for a demand at any time to begin the publicity already paid for and guaranteed by various people. So I am figuring only on the money that I have in sight, without regard to whether or not the Moroccan affair will be settled before Nov. 5. Market conditions are improving, and if Tenabo is ever floated, it must be done when the public announcement is made of the close of the Moroccan affair. [291]

As soon as I can get this money, I will deposit it in the B. F. A. and have them cable you that they will accept the draft of the company for that sum. It would be easy enough for you to have the draft cashed in Salt Lake City against the representations of B. F. A. or better still, I suppose, it would be to have the B. F. A. cable Walker Brothers in Salt Lake to the effect that they will honor the draft of the company for the sum mentioned.

Faithfully yours,

(Signed) P. B. LOCKER.

**Complainant's Exhibit No. 31 [Letter, Dated November 19, 1910, to P. B. Locker].**

Nov. 19, 1910.

Mr. P. B. Locker,  
Hotel Chatam,  
Paris, France.

Dear Payton:

Mr. Howard, who has been sick, was out today and I have signed up the letter to the Franco-Americane Bank by the President and treasurer, embodying the order to pay the 150.000 francs to the underwriting syndicate, and am getting this letter together with certified copy of resolution in the fast mail today.

At the last meeting of directors we spent from 10 o'clock until 1 on the matter of paying Coleman, Iselin, Kroll and Ballin their commissions and have passed resolutions covering this, certified copy of which will be sent you, perhaps in this same cover. The purpose of drawing this in two resolutions as you will have it follows from the following line of reasoning:

If any one knows of your commission they are liable to tell others, and if any interested in the deal know it, they are liable to ask you the amount of your commission. They would perhaps consider they had a right to know and perhaps they would. You would probably tell them it was none of their business. Resulting friction might break up the deal, and it is a very simple matter to pass two resolutions rather than take any chances of having this deal broken up.

If the question of your commission ever arises, you would have to tell them it was none of their business, or else specify as we did in New York, that from the result of treasury stock sales certain funds would be set aside for development and certain specified equipment expenditures would be made leaving a margin to cover your commissions. As there is a certain percentage [292] of chances that either one of these answers would be unsatisfactory, the only logical conclusion is to avoid the question being raised as far as possible.

We therefore send the second resolution, of the two which we send you, to the bank, from which you will gain the idea operating in our mind. Mr. Smith, who first raised this question, also raised the point that others interested in the deal, knowing of your commission, would try to hold you up to the limit, which also is, I believe, probable. You can see how closely the Directors are looking into all matters which they pass upon and how carefully they proceed.

There is very little to write of from this end of the line. I have written to Hartford relative the assessment work on the wax property and will write you a separate letter on this subject. I have about got signed up all the various papers covering the Colton Oil proposition and when I get this completed will write you fully as to it.

Have ordered Raleigh to go ahead with the assessment work in Tenabo, but have made no arrangements as to the payment of the bills. Am slowly carrying on correspondence with Raleigh relative

options, trying to keep things tentatively held open until I can hear what the plan is that you have in mind that you wrote about two or three months ago and as to which you have written me nothing further. Raleigh wants \$35,000 for the claims Weston secured an option on, on the same terms as Weston had, which looks to me like too much money.

of securing on the which I am sure will please you. There is a large size photograph of the Utah Copper workings showing a number of steam shovels at work, cutting down the hill, and which together makes quite an impressive photograph. A cut could be made from this and published with your advertising under which could appear some comparative statement, for instance, a quotation from Weston's letter where he compared the Copper Hill property with the Utah Copper, and in connection with the comparison of the Copper Hill possibilities with the Utah Copper this photograph might be of great interest. I went to the photograph gallery to send you one but found that they cost \$7 which these days is a very material consideration. [293]

It would be hard for you to imagine the financial straits one can run into by a continuation of the policy of paying out with nothing coming in and no possibility of getting anything in as long as I stay in this country. If, however, you consider this important you could get the underwriting syndicate to send me an order for this and maybe other things that you might think of that would be a help to them in advertising.

I hope you received the plates of the Tenabo photographs all right, which I sent you some time ago, also the maps, etc. If there is anything else along this line, do not hesitate to call for anything we can send you because I consider this part of the business of utmost importance. The stock cannot be sold without educating the mind of the French public investors to its value and this must be by the proper presentation of all the strong facts which can be brought to bear upon the question. Along this line the statement made by Gen. Warren comparing the showing at Tenabo with that of Goldfield at an equal period of development, in conjunction with one of the quarterly statements of the Goldfield consolidated (provided Mr. Warren's statement was sincere and not hot air) might be of some advantage. I am not familiar enough with the conditions at Goldfield in its former stage of development to know, but am inclined to doubt the plausibility of Gen. Warren's remarks.

How are you getting along with the Pioche Mines proposition? Conditions in Pioche are creating a great deal of comment here in Salt Lake, and each day it looks more and more like there is some foundation to the rumor that the Standard Oil interests are buying up the low grade fluxing ore properties there as a foundation for a smelting plant.

I hope you will continue to keep us posted as to the developments both in the Pioche and in Tenabo after the public begins to be tested on the success of the flotation. You have certainly been very good about writing, and I hope you will keep it up, also

that your health continues good and that you have had no further recurrence of your appendicitis.

Please give my kindest regards to Mr. Kroll and Mr. Ballin and wishing you all kinds of good things, believe me,

As ever yours. [294]

**Complainant's Exhibit No. 32 [Letter, Dated April 12, 1912, P. B. Locker to John Janney].**

Paris, April 12, 1912.

Mr. John Janney,  
Leesburg, Va.

My dear Janney:

I enclose herewith a copy of a letter addressed to me by Mr. Mont Ferry and copies of my replies thereto. I thought it better not to give fuller details as you had no doubt communicated to them the contents of my letters and you may write to them, making such comments and adding such details as you wish to put before them.

I wish you would also write me and suggest the covering of any other points that you may deem advisable.

Faithfully yours

(Signed) P. B. LOCKER.

Copy.

Salt Lake City, March 25, 1912.

Mr. P. B. Locker,  
9 due Pillet Will, Paris.

My dear Mr. Locker:

The directors of the Tenabo company, have, as you know, been subjected to an examination before a commissioner in matters pertaining to a law suit against our company, which is now pending in

Nevada. It became apparent during the examination that considerable stress was laid upon the company's failure to communicate directly with you and likewise your failure to communicate directly with the company, reporting what progress had been made in your negotiations and what the status of those negotiations was from time to time. It now seems desirous to us that you submit a statement which shall cover briefly the following points:

1. The numerous and complicated preliminaries necessary.
2. The tremendous expense incurred by you.
3. An outline of the plan for the sale of our securities.
4. The present status of the campaign.

You will understand how this matter should be covered, for we desire to use it and perhaps introduce it in our defense during April. Letters touching upon this matter which you have written to Mr. Janney have of course been submitted to us and are of course of reports from time to time covering your operations. However, we deem it desirable that you communicate directly with me as president covering the matters outlined above. I do not apprehend that the contention made by our opponents in this law suit will [295] prevail, but I desire to use every precaution to protect the company and its stockholders. With kind personal regards, I am,

Very truly yours,

(Signed) W. MONT. FERRY,

President, Tenabo Mining & Smelting Co.

**Complainant's Exhibit No. 33 [Letter, Dated April 11, 1912, P. B. Locker to W. Mont. Ferry].**

Paris, April 11, 1912.

Mr. W. Mont. Ferry,  
President of the Tenabo Mining & Smelting Co.,  
Utah Savings & Trust Co.,  
Salt Lake City, Utah.

My dear Sir:—

For the sake of order, I wish to give you a brief outline of the efforts put forth, and the work done, on behalf of your company in order to place its shares in France.

After a campaign in the East to sell the treasury shares of the Tenabo Mining & Smelting Company, a campaign which was unsuccessful owing to the interference of stockholders who wished to profit personally at the expense of the other stockholders I decided to seek, in France, a new field and, if possible, to get away from the influence that prevented success in New York.

To this end I came to Paris, investigated conditions, returned to New York, secured the services of one of the prominent firms of French lawyers there, (Coudert Freres), to outline the plan of procedure necessary to secure the admission to sale in France of the shares of the Tenabo Mining & Smelting Company. This plan I presented to your company and undertook the work. The admission of foreign securities in France is very difficult.

1. A very heavy tax, or admission fee, is imposed on all foreign securities.

2. This tax must be paid for three years in ad-

vance, or the foreign company wishing to place its shares must secure a responsible representative (Agent Responsable), acceptable to the French Government, who guarantees the payment of this tax.

3. The foreign company must have its articles of incorporation, by-laws, etc., published in a Journal (Official) together with the application for admission of these securities, made by a responsible French citizen.

4. After an investigation by the Government of the citizen making the [296] application for admission, and the "Agent Responsable," the foreign company is either admitted or not admitted to sell its shares in France. If admitted, it must then comply with the conditions imposed by the Stock Exchange (Bourse).

(a) That none but bearer certificates (Certificates au Porteur) are admitted to quotation. (b) That a foreign company must issue its shares in this form through a trustee. (c) That the Trust Agreement by which the certificate au Porteur are issued, must be acceptable in terms and conditions both to the Bourse and to the Government. (d) That one of the parties to the Trust Agreement must be responsible French Financial Institution.

5. Under the present laws of France, no one has the right to negotiate, sell, or contract to sell any foreign security until all the above conditions have been complied with, under penalty of a heavy fine or imprisonment, or both.

All of these formalities have been complied with for your company entailing an endless amount of

work and the expenditure of a large sum of money. For example, to comply with paragraphs 1 & a, I secured the Banque Franco-Americane as your "Agent Responsable," whose direct responsibility, for taxes alone, is frs. 45.000 — \$9.000. To comply with paragraph 4, (b & C) I secured the Windsor Trust Co., of New York, as trustee and in France, the Banque Franco-Americane, as signatory of the Trust Agreement and "Services Financiers." The fee of the Windsor Trust Co., was 3.000 and that of the Banque Franco-Americane 1.800. The legal fees of Coudert Freres, Rollins & Rollins, on account of the Windsor Trust Co.; A. L. Picard, in Paris, on account of your company, and De. Molens for the syndicate de la Bourse, amounted to \$3.800 — \$17.600.

To provide the certificates au Porteur, to comply with paragraph 4. 2., it was necessary to have the text of the certificates both in French and English and printed from steel engravings, each certificate with two signatures, as well as an equal number of nominative certificates with two signatures, the cost of the 45.000 "Certificate au porteur," and the 45.000 nominative certificates, and the signatures and delivery in Paris by the Windsor [297] Trust Co. of the same amounted to \$10.148.27

to comply with paragraph 3 it required an expenditure of..... 491.

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Total \$28.239.27

The expenses incurred by me on behalf of your company amounted in reality to over \$30,000, before

I was in a position to negotiate legally your shares and in this sum there is no allowance made for personal expenses nor for my time.

During the months required to complete the various formalities, I had observed that, in general, any issue, made in France, of securities that proved a success, was advertising in the political and financial press both of Paris and of the Provinces. By investigating, I determined that the financial columns of all the French newspapers, of any value, were leased to two or three syndicates or agencies; that all of these agencies were controlled by the same group of people; that an advertising contract with one of these agencies was the only way to secure publicity and that such a contract for publicity was necessary before attempting to make an issue.

The necessity of such advertising contract will be apparent to you when you consider that a bank, of the strength and standing of the *Credit Lyonnais*, pays from three to five hundred thousand francs for publicity with each and every issue of bonds made by it, even though it knows in advance that the issue will be many times over-subscribed.

At that time the political outlook in Europe was not very clear and no banker would assume the responsibility of advancing the money necessary to make the publicity and no banker would undertake the issue without such publicity. I then decided to form an underwriting syndicate and by that means provide the funds for publicity and secure the sale of a certain number of shares, thereby providing the company with funds. This syndicate I formed for

75,000 shares, and gave to it an option on the remainder of the 45,000 certificates. A committee of three was elected to direct this syndicate, consisting of Mr. Coleman, director of the Banque Franco-Americane; Mr. G. Hirschmann, of the Bank Hirschmann & Cie; and Mr. Bernard Desouches. These gentlemen, all of whom had taken a certain number of shares, wished [298] to make the issue at an opportune moment, and at a time when they would have a reasonable chance of success. They interested certain bankers in the proposition and had decided, after various delays, to commence the placing of the shares in the spring of 1911, although the market was anything but encouraging. However, at this time the litigation in which your company was involved, and the order to the Banque Franco-Americane not to deliver shares, together with derogatory letter written by certain of your stockholders to certain underwriters and bankers here, formed a legal basis for many of the underwriters to refuse to keep their engagements and to demand the return to them of the money they had already paid. After considering this question, it was decided that it was to the interest of all concerned to repay those who demanded it and to form a new syndicate composed of those syndicataires who wished to remain in and such others as we might be able to secure.

This new syndicate was formed for the purchase of 40,000 shares, and Mr. P. Tricart was elected as director of its operations. The reports of your engineers, Messrs. MacVichie, Brown, Schultz, Gillette, L. Humphreys and Weston, were submitted and

formed the basis of the subscription, all of the syndicataires declaring that they knew the contents thereof and made their subscriptions based on the said knowledge.

The syndicate, through its director, Mr. P. Tricart, made a contract for publicity with one of the agencies and paid to this agency frs. 100,000, as a minimum guarantee. To secure the full and hearty co-operation of the Press, it was deemed advantageous to give a commission of a certain number of francs per certificate sold, which sum is to be divided among the various journals.

Mr. Tricart also secured the co-operation of five banks whose agents and branches in the provinces were to take up the placing of your shares.

All was then in order to begin the placing but the market conditions were very bad owing to the disturbed political situation in Morocco, and the strained relations of France, Germany and Spain on this subject. Then came the war between Italy and Turkey, and it was the opinion of the syndicate that the moment was not opportune for the introduction of the shares. [299] However, knowing the needs of your company, I insisted upon the introduction being made, and the shares of the Tenabo Mining & Smelting Company were introduced upon the French Bourse in December last, and since that time I have been able to send to you a small amount of money.

Within the last few weeks, Mr. Tricart has been able to add another influential bank to the list of those working to place the shares of your company, and these bankers, among themselves, have recently

provided a fund of frs. 85,000 to extend still further their operations by sending out circulars and letters to their clients, and the public in general, and with the present rise in the price of copper it is believed that they will, with reasonable success, place a large block of your shares.

The present outlook in copper is encouraging and the expenditure of the frs. 85,000 on the part of the bankers indicates their confidence in the eventual success of the issue and their campaign is to begin this week.

I have therefore caused to be expended on account of your company, not only the above mentioned . . . . . \$28.239.27  
 100.000 francs for publicity . . . . . 20.000  
 and the frs. 85.000 provided for the further extension of campaign . . . . . 17.000

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making total of . . . . . \$65.239.27

but I have been obliged to furnish and maintain an office, to employ a secretary understanding thoroughly both French and English, and to retain the services of a lawyer to watch over the interests of your company.

These expenditures have *amount* to frs. 24,720 (about \$4.944) to date, without any consideration being given to my personal expenses and time.

In conclusion, I wish to state that at the present time there are six bankers occupying themselves with placing the shares of the Tenabo Mining & Smelting Company; that they have a fund of frs. 85.000 to carry their proposed campaign into effect; that the

political horizon seems to be clearing, a condition which invariable precedes the making of investments by the French public, and those in a position to know give it as their opinion that the market outlook is improving, and will continue to improve and the moment is rapidly approaching when new issues will have a good chance of success, and [300] copper stocks in particular.

Faithfully yours,

(Signed) P. B. LOCKER.

**Complainant's Exhibit No. 34 [Letter, Dated December 6, 1910, Andrea L. Picard to John Janney].**

December 6th, 1910.

John Janney, Esq.,  
105 Mercantile Block,  
Salt Lake City, U. S. A.

Dear Sir:—

I beg to hand you enclosed copy of a letter to me from Mr. J. H. Coleman, one of the managers of the Bank Franco-Americane dated the 29th of November; also the underwriters list therein mentioned.

I propose writing a full report as to the present situation of affairs explaining you in detail the work done and the present outlook; this report I hope to send to you by next mail. Meanwhile I beg to remain, dear Sir,

Yours very truly,

(Signed) ANDRE L. PICARD.

2 Encl.

Paris, November 29, 1910.

Monsieur A. L. Picard,  
Avocat-Conseil,  
17 bis rue de la Boetie, Paris.

My dear Sir:—

At the request of Mr. Locker, I am sending you a list of the underwriters who have subscribed for 75,000 shares of the Tenabo Mining & Smelting Co., and the amounts of their subscriptions.

As you are aware, we have used all the facilities of this bank in determining the responsibility of the applicants before underwritings were accepted and it is my opinion, based upon reports received, that they may all be considered financially responsible for their undertaking.

Very truly yours,  
(Signed) J. COLEMAN.

Paris, December 9th, 1910.

Tenabo Mining & Smelting Co.

John Janney, Esq.,  
105 Mercantile Block,  
Salt Lake City.

Dear Sir:—

Following on my letter to you of the 6th inst., sending you a copy of the letter from Mr. J. H. Coleman and a list of the underwriters [301] thereto annexed, as attorney of the Tenabo Mining & Smelting Company, I now beg to sum up the situation for your information and guidance:

1. General outline of the plan followed:

The first negotiations which Mr. Locker has in France with various bankers such as the "Banque de

l'Union Nouvelle" in Paris and a similar firm in Brussels and others proved that most of the people approached were unwilling to purchase *firm* a block of shares while they were desirous to receive a sum of money cash for expenses in "publicity" and "otherwise."

On the other hand it was unwise to give an option which would have extended over a long period of time without any possible guarantee as to the success of the party to whom the option would have been given.

It was therefore thought preferable to devise a third plan giving a short option which would be extended on the condition that a syndicate of underwriters acceptable to your company would be formed in a given time, the expenses altogether reckoned at 150,000 francs to be advanced by the person holding the option or his assignees and to be borne by your company only out of the proceeds of the first sales to be made in France; this is the contents in a few words of the contract between your company and Mr. Bernard Desouches which contract is dated the 1st of August 1910.

## 2. Legal steps which had to be taken.

You are already aware that under the French law shares of a foreign company can be sold or offered to a banker, or negotiated, or introduced on the Paris Bourse before the following formalities have been complied with:

(a) A publication must be made in the so called annexed bulletin to the French Official Journal and such publication must include a notice giving a cer-

tain quantity of information to the French public concerning the capital of the company, its balance sheet, its registered office, the meetings of the shareholders, the number of the shares issued as Vendors' shares, etc., etc.,—such publication must also include a French translation of the Articles of Incorporation and a French translation of the by-laws of the company, the necessary publication under the law was made in the annexed bulletin to the official journal of the 17th of October 1910.

(b) It is also necessary and compulsory to obtain from the French Fiscal [302] Authorities a so-called "Abonnement" or agreement of the Government that the taxes owing by the foreign company in France be paid every three months under the guarantee of a surety or as the French law calls him of an "Agent Responsable"; to this effect I have had to file with the Fiscal Authorities a certified copy of the by-laws and a translation into French of the same, the official engagement signed by the company under which the company binds itself to pay the taxes due in France, an opinion on the laws of the State of Nevada certified to the United States Consulate in Paris to the effect that the above documents were regular and binding on the company; I had also to file such documents as would cause the Government to accept the "Banque Franco-Americane" as surety or agent responsible as above explained.

We have complied with these different formalities and after some negotiations with the Fiscal Authorities our papers have been accepted and the Banque Franco-Americane has been authorized to act as

Agent Responsable the decision of the French authorities on the subject being dated the 1st of November 1910.

At this moment an incident arose to which I shall briefly call your attention; a letter from the Fiscal Authorities was received by the Banque Franco-Americane asking for exact information as to all contracts made in connection with the proposed issue, the object of the Fiscal Department being to endeavor to find out whether contracts had not been made before the 1st of November (the date when the security had been accepted as above explained) as if we had not so informed the authorities the company might have been involved in penalties and fines. To avoid this the answer we caused to be given to the Fiscal Authorities was to the effect that the issue was being made under an option dated the second of November and Mr. Desouches's contract with the company dated the 1st of August was therefore replaced by another contract in the same wording and dated the 2nd of November 1910, the changes between the two agreements being only formal leaving out such dates which had already elapsed, but giving a prolongation of six weeks in the different dates mentioned in the original agreement. The contract of the 2nd of November is, I believe, before you. [303]

3rd. Application for an official quotation.

It was thought important in connection with the sale of your shares in France to obtain not only a private quotation (it is only a matter of ordinary publicity) but also a quotation in the official list published by the syndicate of bankers at the Paris

Bourse; this syndicate is extremely technical and is generally thought that it is exceedingly difficult to obtain such a quotation; as we had decided to make an attempt I thought it best instead of merely sending our papers to the syndicate to have them passed beforehand by the gentlemen who is the attorney and legal adviser of the syndicate; I therefore submitted to him some time ago our papers, i. e., copy of those which had been sent to the Fiscal authorities as previously stated and in addition the certificate for the shares, the stock trust agreement already signed and the translation of this document into French.

We have had four long sessions with the attorney for the bankers' syndicate and I have succeeded in disposing of the many petty objections he had raised against the form of our certificates. Further I satisfied him as to a number of questions which he brought forward, the only question still at issue being the stock trust agreement which will have to be more or less altered to meet the requirements of the syndicate; I am at present engaged on this work.

#### 4. Further contracts.

The negotiations which Mr. Locker has followed in France on behalf of the company have made it necessary from time to time to enter into various agreements as to commissions and I understand that you have before you copies of such agreements; I need not therefore refer to them more in detail.

#### 5. Present position.

Referring to the first paragraph of the present letter and to the list of underwriters which was sent to you by my office on the 6th inst. I shall now add

that in conformity with the clauses of the form signed by the underwriters a meeting was summoned and held on the 23rd of November last for the purposes to elect two additional members of the managing committee of such syndicate of underwriters; Mr. Coleman had been acting as [304] sole manager until that time and his services were valuable to all concerned; you are aware that Mr. Coleman is one of the two managers of the Banque Franco Americane, that this bank has a large French and American clientele and that they have issued or have been or are interested in several issues such as "The Minas Pedrazzini Gold and Silver Mining Co." "The Magic City Co.," etc., their capital has been raised from \$2,000,000 to \$4,000,000.

The two members who were elected as co-managers with Mr. Coleman are Mr. Desouches and you are already acquainted with this gentleman as being the holder of the option. The second underwriter who was elected as manager is Mr. George Hirschmann a banker in Paris who has I am informed, a good connection in the province amongst local bankers and whom I have known personally for some time.

These gentlemen will direct the placing of the shares in France and from the proceeds of such sales seven francs per share will be put to the credit of your company deducting commissions as under instructions to the bank; no commission however will under the contracts I have drawn be paid on the proceeds of the first shares up to 150,000 francs, this sum when received will be paid over to the managing

committee to cover expenses.

I shall be glad to clear up any point as to which you may require an explanation and meanwhile remain, dear sir,

Yours very truly,  
(Signed) For ANDRE L. PICARD,  
E. A. B.

[Indorsed]: No. 1183. U. S. Dist. Court, Dist. Nevada. Chas. D. Bates vs. Tenabo M. & S. Co. Statement on Appeal. Filed April 3d, 1914. T. J. Edwards, Clerk. [305]



*In the District Court of the United States in and for  
the District of Nevada.*

CHARLES D. BATES,

Complainant,

vs.

TENABO MINING & SMELTING COMPANY, a  
Corporation,

Defendant.

**Stipulation [Including Statement of Evidence on  
Appeal, etc.].**

It is hereby stipulated and agreed by and between the parties to the above-entitled action that the "objections and proposed amendments to appellant's condensed statement of the evidence" heretofore filed herein by the appellee may be allowed and incorporated into and with the "statement of evidence for use on appeal" heretofore lodged in the clerk's office of said court for examination, and that the said

statement of evidence with said objections and proposed amendments incorporated therewith may be approved and allowed as the statement of the evidence to be included in the record on appeal in said cause.

And it is hereby further stipulated and agreed that the record on appeal in said cause may be made up by the clerk in accordance with the rules of practice affecting the same and be transmitted to the clerk of the Circuit Court of Appeals of the Ninth Circuit at San Francisco, California, and said record there filed and the case docketed pursuant to rule 16 of said Circuit Court of Appeals.

Dated, May 20, 1914.

J. D. SKEEN,

One of the Solicitors for Plaintiff and Appellee.

H. C. EDWARDS,

Solicitor for Defendant and Appellant.

Pursuant to the foregoing stipulation it is hereby ordered that the statement of the evidence for use on appeal heretofore lodged by defendant and appellant together with and including the objections and proposed amendments to appellant's said condensed statement of the evidence heretofore lodged herein by the plaintiff and the objections and amendments by appellee be and the same is hereby allowed and approved as the statement of the evidence for use on appeal in said cause.

Dated, May 22d, 1914.

E. S. FARRINGTON,

Judge.

[Indorsed]: No. 1183. U. S. Dist. Court, Dist. Nevada. Chas. D. Bates vs. Tenabo M. & S. Co. Stipulation approving statement of evidence on appeal. Filed May 22d, 1914. T. J. Edwards, Clerk.  
[306]

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*In the District Court of the United States in and for  
the District of Nevada.*

CHARLES D. BATES,

Complainant,

vs.

TENABO MINING & SMELTING COMPANY.

Defendant.

**Restraining Order.**

This cause coming on for hearing before the Court, the complainant appearing by his solicitors, J. D. Skeen and Corwin S. Shank, the defendant appearing by its solicitors, Edwards & Ashton, and after the introduction of evidence on behalf of both parties hereto, and the argument of counsel, and the Court being fully advised in the premises, and it appearing that it is expedient to give time within which to file briefs herein, and that pending the final decision of the court the property and all conditions of the company should remain *in statu quo*, and upon application of the solicitors for complainant for a restraining order, to that effect it is now and here ordered and adjudged that the defendant, its officers, agents and attorneys be, and they are hereby, restrained and enjoined from disposing of or in any manner encumbering any of the property

and assets of this corporation, including the treasury stock thereof, and are further enjoined and restrained from paying out any moneys whatsoever, including the \$1283.61 now in the Walker Bros. Bank of Salt Lake City, Utah, and the \$47.92 now in the Merchants' Bank of Salt Lake City, Utah, and they are further enjoined and restrained from contracting any obligations or indebtedness for or on behalf of the defendant company for any purpose whatsoever, excepting as authorized by the court. All until the further order of the court.

Done in open court this 11th day of September, A. D. 1912.

E. S. FARRINGTON,  
United States District Judge.

[Endorsed]: No. 1183. In the District Court of the United States, in and for the District of Nevada. Charles D. Bates, Complainant, vs. Tenabo Mining and Smelting Company, Defendant. Restraining Order. Filed September 11th, 1912. T. J. Edwards, Clerk. [307]

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*In the District Court of the United States, Ninth  
Circuit, District of Nevada.*

No. 1183.

C. D. BATES,

Complainant,

vs.

TENABO MINING & SMELTING COMPANY,  
Defendant.

**Order Modifying Restraining Order.**

Upon reading and filing the verified petition of Tenabo Mining & Smelting Company, the above-named defendant, by H. C. Edwards, its solicitor, and it appearing therefrom that in order to preserve and protect the mining claims and property hereinafter mentioned, it is necessary that the annual assessment work, under the laws of the United States, upon said mining claims and properties, for the year 1913, be performed;

Now, therefore, it is ordered and adjudged that the defendant, Tenabo Mining & Smelting Company a corporation, be permitted and authorized to do the necessary annual assessment work for the year 1913, on or for, and on behalf of, the following lode mining claims, situated in the county of Lander, State of Nevada, known and described as follows, to wit:

The Ollie, Reno, Winnemucca, Widow's Extension, Copper Hill No. 1, Copper Hill No. 2, Copper Hill No. 3, Copper Hill No. 4, Reliance No. 1, Reliance No. 2, Reliance No. 3, Reliance No. 4.

It is further ordered, adjudged and decreed, that the restraining order heretofore issued out of said court on the 11th day of September, 1912, be modified and the same is hereby modified so as to permit the said defendant, its officers, agents, servants and attorneys, to perform said assessment work and to contract such obligation or indebtedness, or to encumber its property or assets, as is necessary to raise sufficient revenues for the purpose of performing such assessment work.

It is further ordered, adjudged and decreed that the authority herein granted is restricted solely to the performance of said assessment work and to the raising of sufficient funds whereby said work may be performed and that no ores or minerals extracted from said mining properties or either of them shall be taken from or off of said properties or either of them, [308] or in any wise converted by the said defendant or its officers, agents, employees, servants or attorneys.

Dated this 17th day of December, 1913.

E. S. FARRINGTON,  
District Judge.

[Endorsed]: No. 1183. In the District Court of the United States for the District of Nevada. C. D. Bates, Complainant, vs. Tenabo Mining & Smelting Company, Defendant. Order Modifying Restraining Order. Filed this 17th day of December, 1913. T. J. Edwards, Clerk. Samuel Platt, Carson City, Nevada, Attorney for Defendant.

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**[Petition for and Order Allowing Appeal and Fixing  
Amount of Bond.]**

*In the District Court of the United States in and for  
the District of Nevada.*

CHARLES D. BATES,

Complainant,

vs.

TENABO MINING & SMELTING COMPANY, a  
Corporation,

Defendant.

To the Honorable E. S. Farrington, District Judge:

The above-named defendant feeling itself aggrieved by the interlocutory decree made and entered in this cause on the 14 day of February, A. D. 1914, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and prays that this appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit sitting at San Francisco, State of California, and your petitioner further prays that the proper order touching the security to be required by it to perfect this appeal be made.

H. C. EDWARDS,

Solicitor for Tenabo Mining and Smelting Co., Defendant.

The foregoing petition on appeal is granted and the claim of appeal therein named is allowed, and the amount of cost bond on appeal fixed at the sum of five hundred dollars.

Dated, March 13, 1914.

E. S. FARRINGTON,

District Judge. [309]

[Endorsed]: No. 1183. In the District Court of the United States in and for the District of Nevada. Charles D. Bates, Complainant, vs. Tenabo Mining & Smelting Company, a Corporation, Defendant. Petition for Appeal. J. D. Skeen, Corwin S. Shank,

Attys. for Complainant. H. C. Edwards, Atty. for Defendant. Filed March 14th, 1914. T. J. Edwards, Clerk.

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[**Bond on Appeal.**]

*In the District Court of the United States in and for the District of Nevada.*

CHARLES D. BATES,

Complainant,

vs.

TENABO MINING & SMELTING COMPANY, a Corporation,

Defendant.

Know all men by these presents that we, Tenabo Mining & Smelting Company, a Nevada corporation, as principal, and P. M. Lee and N. Coffin, as sureties, acknowledge themselves indebted to Charles D. Bates appellee in the above cause in the sum of Five Hundred Dollars, conditioned that

Whereas on the 14th day of February, A. D. 1914, in the District Court of the United States in and for the District of Nevada, in a suit pending in that court wherein Charles D. Bates was complainant and Tenabo Mining & Smelting Company, a corporation, was defendant, numbered in the Equity Docket as No. 1183, an interlocutory decree was rendered against said Tenabo Mining & Smelting Company, and the said Tenabo Mining & Smelting Company, has obtained an appeal to the Circuit Court of Appeals of the United States in and for the Ninth Circuit, and filed a copy thereof in the office of the

clerk of the court to reverse said decree, and a citation directed to the said Charles D. Bates citing and admonishing him to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden in the City of San Francisco, in the State of California on the 12th day of April, A. D. 1914, next.

Now, if the said Tenabo Mining & Smelting Company shall prosecute its appeal to effect and answer all costs if it shall fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

In Witness Whereof the said Tenabo Mining & Smelting Company has caused [310] these presents to be executed on its behalf by its president and the said F. M. Lee and N. Coffin have hereunto subscribed their names this 13th day of March, A. D. 1914.

TENABO MINING AND SMELTING COMPANY,

By W. MONT. FERRY,  
Its President.

F. M. LEE.  
N. COFFIN.

State of Nevada,  
County of Washoe,—ss.

F. M. Lee and N. Coffin, being first each severally duly sworn, on oath severally say that he is a resident of the State of Nevada and County of Washoe, and that after paying all of his just debts and liabilities he is worth more than \$1000.00, in real estate located within the jurisdiction of the District Court of the

United States in and for the District of Nevada, subject to execution, levy and sale.

F. M. LEE.  
N. COFFIN.

Subscribed and sworn to before me this 13th day of March, A. D. 1914.

[Seal]

J. W. DAVEY,  
Notary Public.

My commission expires April 24, 1915.

The sufficiency of sureties on the foregoing bond approved this 13th day of March A. D. 1914.

E. S. FARRINGTON,  
Judge.

[Indorsed]: No. 1183. U. S. Dist. Court, Dist. Nevada. Chas. D. Bates vs. Tenabo Mining & Smelting Company, a Corporation. Bond on Appeal. Filed March 14th, 1914. T. J. Edwards, Clerk. [311]

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*In the District Court of the United States in and  
for the District of Nevada.*

CHARLES D. BATES,

Complainant,

vs.

TENABO MINING & SMELTING COMPANY, a  
Corporation,

Defendant.

**Assignment of Errors.**

And now, on this — day of March, A. D. 1914, came the defendant by its solicitor, H. C. Edwards,

and says that the interlocutory decree entered in the above-entitled cause on the 14 day of February A. D. 1914, is erroneous and against the rights of said defendant for the following reasons:

1. Because it appears from the record in this cause that the bill of complaint was brought by Charles D. Bates, complainant, as a stockholder of the Tenabo Mining & Smelting Company, the defendant corporation, for the purpose among other things of winding up the affairs of the Tenabo Mining & Smelting Company and in connection therewith the appointment of a receiver to take possession of all of the assets of said corporation located within the State of Nevada and to sell the same and after deducting the costs and expenses of said proceeding, including counsel fees, that the assets be distributed among the creditors and the surplus, if any, distributed *pro rata* among the stockholders of said corporation, and that all of the stockholders of said corporation were not made parties to said suit and that each and every stockholder of said corporation is a necessary and proper party to said suit.

2. Because it appears from the record in this cause that the bill of complaint in this cause was brought by Charles D. Bates complainant as a stockholder of the Tenabo Mining & Smelting Company, the defendant corporation, for the purpose among other things of winding up the affairs of the Tenabo Mining & Smelting Company, and in connection therewith the appointment of a receiver to take possession of all of the assets of said corporation located within the State of Nevada, and to sell the same and after

paying the costs and expenses of said proceeding, including counsel fees, that the assets be distributed among the creditors and the surplus, if any, distributed *pro rata* among the stockholders of said corporation, and that said [312] complainant among other things based his right to such remedy on the ground that the directors of said defendant corporation had been guilty of fraud and illegal acts injuriously affecting the rights of said complainant and said complainant did not make any of the directors of said corporation parties to said suit and all of the directors of said corporation are proper and necessary parties.

3. Because it appears from the record in this cause that the defendant corporation was not at the time said interlocutory order or decree was made and entered insolvent.

4. Because it appears from the record in this cause that complainant was not entitled to have an interlocutory order or decree entered therein appointing a receiver and the application therefor should have been denied.

5. Because it appears from the record in this cause that the interlocutory decree made and entered by the Court in this cause on the 14 day of February, 1914, appointing said receiver *in* the only decree which has been entered in said cause and that by said interlocutory decree said receiver is ordered to forthwith take possession of all of the real and personal property of said corporation and to sell the same for cash at public sale and to keep a complete and accurate record of all of his doings. including

an inventory of all property received and held or sold, all moneys expended and debts incurred, and at the earliest practicable date report fully to said Court the exact status and condition of the affairs of said corporation and of his administration thereof, and that no decree has been made or entered by said Court adjudicating the right of said complainant to have the defendant corporation dissolved or its affairs wound up.

6. Because as appears from the record in this cause said action was tried upon its merits and submitted to the Court for final adjudication and the evidence showed that said corporation was not insolvent and that complainant was not entitled to have a decree made or entered dissolving said corporation or winding up its affairs.

7. Because it appears from the record in this cause that the complainant was not entitled to have the property of said defendant corporation sold under a receivership unless said corporation was dissolved or its affairs [313] were wound up and the evidence in said cause showed that said complainant was not entitled to have a final or any decree entered dissolving said corporation or winding up its affairs.

8. Because the evidence in said cause showed that said complainant was not entitled to have a decree of said Court made or entered granting the prayer of his bill or any part thereof.

Wherefore said defendant prays that the said interlocutory order or decree be reversed and that the District Court of the United States in and for the District of Nevada may be directed to enter a

decree vacating its order and interlocutory decree appointing said receiver and that this court enter or cause to be entered a decree on the merits of the whole cause.

H. C. EDWARDS,  
Solicitor for Defendant.

[Indorsed]: No. 1183. In the District Court of the United States in and for the District of Nevada. Charles D. Bates, Complainant vs. Tenabo Mining & Smelting Company, a Corporation, Defendant. Assignment of Errors. J. D. Skeen, Corwin S. Shank, Attys. for Complainant. H. C. Edwards, Atty. for Defendant. Filed March 14th, 1914. T. J. Edwards, Clerk.

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*In the District Court of the United States in and  
for the District of Nevada.*

CHARLES D. BATES,

Complainant,

vs.

TENABO MINING & SMELTING COMPANY, a  
Corporation,

Defendant.

**Order [Extending Time to Prepare and File  
Statement of Evidence, etc.].**

In the above-entitled cause, upon the application of the said defendant, it is hereby ordered that said defendant be and is hereby given to and including the 28th day of March, 1914, in which to prepare and file in said cause the record or statement of evidence

required by Rule 75 of the Equity Rules of 1912, for use on appeal to the United States Circuit Court of Appeals from the interlocutory decree heretofore made and entered in said cause; and it is further ordered that the said defendant be and is hereby [314] permitted to withdraw the depositions heretofore taken by John W. Christy at Salt Lake City, Utah, and filed in this court, to enable said defendant to prepare the record or statement of evidence aforesaid, the same to be returned to the clerk of this court at the time of filing said record or statement.

Dated March 14th, 1914.

E. S. FARRINGTON,  
District Judge.

[Indorsed]: No. 1183. In the District Court of the United States in and for the District of Nevada. Charles D. Bates, Complainant, vs. Tenabo Mining and Smelting Company, a Corporation, Defendant. Order to Withdraw Depositions, etc. Filed March 14th, 1914. T. J. Edwards, Clerk.

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*In the District Court of the United States in and for  
the District of Nevada.*

CHARLES D. BATES,

Complainant,

vs.

TENABO MINING & SMELTING COMPANY, a  
Corporation,

Defendant.

**Stipulation [for Extension of Time for Presentation of Evidence, etc.].**

It is stipulated by the parties hereto that the Court may enter an order in the above suit extending the time for the presentation of the statement of the evidence herein, prepared by appellant, under Equity Rule No. 75, from the 16th day of April, 1914, to and including the 4th day of May, 1914. And it is further stipulated that the Court may likewise make an order herein extending the time within which appellee may file objections or amendments to the statement of the evidence submitted by appellant, from the 16th day of April, 1914, to the 2d day of May, 1914.

Dated this 7th day of April, 1914.

J. D. SKEEN,

One of the Solicitors for Appellee.

H. C. EDWARDS,

Solicitor for Appellant. [315]

**[Order Extending Time for Presentation of Statement of Evidence, etc.]**

Pursuant to the above stipulation, it is ordered that the time for the presentation of the statement of the evidence by the appellant in the above-entitled suit be and the same is hereby extended from the 16th day of April, 1914, to the 4th day of May, 1914, and it is further ordered that the time for the proposing of objections or amendments by the appellee shall be and the same is hereby extended from the 16th day of April, 1914, to the 2d day of May, 1914.

Dated this 9th day of April, 1914.

E. S. FARRINGTON,  
Judge.

[Indorsed]: No. 1183. U. S. Dist. Court, Dist. Nevada. Chas. D. Bates vs. Tenabo M. & S. Co. Stipulation and Order Enlarging Time to File Statement on Appeal. Filed April 9th, 1914. T. J. Edwards, Clerk.

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*In the District Court of the United States in and for  
the District of Nevada.*

CHARLES D. BATES,

Complainant,

vs.

TENABO MINING AND SMELTING COM-  
PANY, a Corporation,

Defendant.

**Order Extending Time to File Record and Docket  
Case with Clerk of Circuit Court of Appeals.**

On reading and filing the stipulation of the parties to said cause, it is hereby ordered that the time for the defendant and appellant, Tenabo Mining & Smelting Company, be and is hereby enlarged and extended to and including the 15th day of May, A. D. 1914, in which to file the record thereof and docket said case with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By the Court:

E. S. FARRINGTON,  
District Judge.

[Indorsed]: No. 1183. U. S. Dist. Court, Dist. Nevada. Chas. D. Bates vs. Tenabo M. & S. Co. Order Extending Time to File Record on Appeal. Filed April 9th, 1914. T. J. Edwards, Clerk. [316]

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*In the District Court of the United States in and for  
the District of Nevada.*

CHARLES D. BATES,

Complainant,

vs.

TENABO MINING AND SMELTING COM-  
PANY, a Corporation,

Defendant.

**Order Extending Time to File Amendments and  
Objections to Statement of Evidence, to Present  
Statement, and to Docket Case with Clerk of  
Circuit Court of Appeals.**

Pursuant to stipulation heretofore filed herein, it is ordered that the time for the presentation of objections or amendments by the appellee to the statement of evidence prepared by the appellant shall be and the same is hereby extended from the 2d day of May, 1914, to the 20th day of May, 1914; and it is further ordered that the time for the presentation of the statement of the evidence by appellant to the court or judge for approval, under Equity Rule No. 75, be and the same is hereby extended from the 4th day of May, 1914, to the 25th day of May, 1914, and it is further ordered that the time of the defendant and appellant, Tenabo Mining and Smelting Company, be and is hereby enlarged and extended to

and including the 15th day of June, 1914, in which to file the record thereof and docket the said case with the Clerk of the United States Court of Appeals for the Ninth Circuit in accordance with the provisions of Rule No. 16 of the said Circuit Court of Appeals.

By the Court:

E. S. FARRINGTON,  
District Judge.

[Indorsed]: No. 1183. U. S. Dist. Court, Dist. Nevada. Chas. D. Bates vs. Tenabo M. & S. Co. Order Enlarging Time to File Amendments and to File Record on Appeal. Filed April 29th, 1914. T. J. Edwards, Clerk.

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**[Order Extending Time to File Record on Appeal.]**

*In the District Court of the United States for the  
District of Nevada.*

No. 1183.

CHARLES D. BATES,

Plaintiff,

vs.

TENABO MINING & SMELTING COMPANY, a  
Corporation,

Defendant. [317]

Good cause appearing therefor, it is hereby ordered that the defendant have twenty days additional time within which to file the record on Appeal.

June 9th, 1914.

E. S. FARRINGTON,  
U. S. District Judge.

[Indorsed]: No. 1183. U. S. Dist. Court, Dist. Nevada. Chas. D. Bates vs. Tenabo M. & S. Co. Order Enlarging Time to File Record on Appeal. Filed June 9th, 1914. T. J. Edwards, Clerk. [318]

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*In the District Court of the United States in and for  
the District of Nevada.*

CHARLES D. BATES,

Complainant,

vs.

TENABO MINING & SMELTING COMPANY, a  
Corporation,

Defendant.

**Praeceptum [for Transcript of Record].**

To the Clerk of the Above-entitled Court:

Will you kindly incorporate into the transcript of the record on appeal in the above-entitled cause the following portions of the record in your court in said cause:

1. All pleadings filed in said cause.
2. The condensed statement of the evidence in said cause as approved by the Court or the Judge thereof.
3. All opinions of the Court in said cause, if any.
4. All orders made and entered in said cause.
5. All decrees made and entered in said cause.
6. The petition for appeal in said cause.
7. The assignments of error in said cause.
8. The order allowing the appeal in said cause.
9. The bond made and executed by and on behalf of the defendant upon appeal in said cause.

10. The citation on appeal in said cause, together with proof of service thereof.

11. Certificate of the Clerk of said court as required by the rules of this Court and of the United States Circuit Court of Appeals for the Ninth Circuit.

H. C. EDWARDS,  
Solicitor for Appellant.

I hereby acknowledge service of a copy of the foregoing praecipe this 4th day of March, A. D. 1914.

J. D. SKEEN,  
Solicitor for Appellee.

[Indorsed]: No. 1183. U. S. Dist. Court, Dist. Nevada. Chas. D. Bates vs. Tenabo M. & S. Co. Praecipe for Record on Appeal. Filed April 9th, 1914. T. J. Edwards, Clerk. [319]

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*In the District Court of the United States in and for  
the District of Nevada.*

CHARLES D. BATES,

Complainant,

vs.

TENABO MINING & SMELTING COMPANY, a  
Corporation,

Defendant.

**Citation [on Appeal (Original)].**

United States of America to Charles D. Bates, Complainant in the Above-entitled Cause, and to J. D. Skeen and Corwin S. Shank, Attorneys for said Complainant:

You are hereby notified that in a certain case in

equity in the District Court of the United States in and for the District of Nevada wherein Charles D. Bates is complainant and Tenabo Mining & Smelting Company, a corporation, is defendant, an appeal has been allowed the defendant therein to the United States Circuit Court of Appeals for the Ninth Circuit, and you are hereby cited and admonished to be and appear in said Court sitting in the City of San Francisco, State of California, 30 days after the date of this citation to show cause if any there be why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

Witness the Honorable E. S. FARRINGTON, Judge of the District Court of the United States in and for the District of Nevada, this 13th day of March A. D. 1914.

E. S. FARRINGTON,  
United States District Judge.

Service of the above citation is hereby accepted this 21st day of March, 1914.

J. D. SKEEN,  
One of the Solicitors for Complainant.

[Endorsed]: No. 1183. In the District Court of the United States in and for the District of Nevada. Charles D. Bates, Complainant, vs. Tenabo Mining & Smelting Company, a Corporation. Citation. Filed March 31st, 1914. T. J. Edwards, Clerk.

*In the District Court of the United States for the  
District of Nevada.*

CHARLES D. BATES,

Complainant,

vs.

TENABO MINING & SMELTING COMPANY, a  
Corporation,

Defendant.

**Clerk's Certificate to Transcript of Record.**

I, T. J. Edwards, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that the foregoing 321 typewritten pages, numbered from 1 to 321, both inclusive, are a true copy of the record, assignment of errors and all proceedings in the cause therein entitled.

I further certify that the cost of this record is \$418.80, and that the same has been paid by the solicitor for defendant.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said court, at Carson City, Nevada, this 29th day of June, 1914.

[Seal]

T. J. EDWARDS,

Clerk.

[Endorsed]: No. 2441. United States Circuit Court of Appeals for the Ninth Circuit. Tenabo Mining and Smelting Company, a Corporation, Appellant, vs. Charles D. Bates, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Nevada.

Received and filed June 30, 1914.

FRANK D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Meredith Sawyer,  
Deputy Clerk.